133-660

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 145.

FRANCIS A. PALMER, PLAINTIFF IN ERROR,

vs.

MARTIN T. McMAHON, RECEIVER OF TAXES OF THE CITY OF NEW YORK.

IN ERROR TO THE COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK.

FILED OCTOBER 11, 1886.

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a Court of Appeals.

In the Matter of the Application of MARTIN T. MCMAHON, Receiver of Taxes,

against

F. A. PALMER.

Motion papers on appeal from order of the general term of the court of common pleas for the city and county of New York affirming an order of the special term committing F. A. Palmer in default of payment of fine.

William Hildreth Field, attorney for F. A. Palmer, appellant; E. Henry Lacombe, corporation counsel.

1 *Warrant No.* 4. *Schedule No.* 785. *Line No. Bank* 20926.

To the court of common pleas for the city and county of New York:

The petition of Martin T. McMahon, as receiver of taxes in the city of New York, respectfully states and shows to the court that your petitioner was duly appointed receiver of taxes in the city of New York, and qualified and entered upon the duties of his office as such receiver on the 27th day of September, 1872, and has ever since been and still is such receiver.

That in the year 1881 F. A. Palmer was a resident of the Twenty-first ward, in the city of New York.

That in the same year and for some time prior thereto the National Broadway Bank was a bank organized under the authority of the laws of the United States and of the State of New York, and located and doing business in the Third ward of said city of New York.

That in said year the said F. A. Palmer was a stockholder in said bank.

That subsequent to the first Monday of September, 1880, the shares of stock in said bank owned by said F. A. Palmer were, by the deputy tax commissioner assigned to that duty by the commissioners of taxes and assessments in said city and under their
2 direction, duly assessed for the year 1881 at the valuation of two hundred and forty-seven thousand six hundred and thirty-five dollars.

That the said assessed valuation was by the said commissioners duly entered in the books called "The Annual Record of the Assessed Valuation of Real and Personal Estate" for the year 1881.

That the said "Annual Record of the Assessed Valuation of Real and Personal Estate" for the year 1881 was kept in the office of said commissioners, and was open for examination and correction from the second Monday of January, 1881, until the first day of May, 1881.

That previous to and during the time said books were open, as aforesaid, the said commissioners did advertise the fact in the City

Record, such being the manner of advertisement deemed by the said commissioners most advisable.

That thereafter and before April 30, 1881, application for a reduction of said assessed valuation was made by the owner of the shares so assessed, and the said valuation was by the said commissioners, prior to June 1, 1881, reduced to the sum of one hundred and ninety thousand six hundred and thirty-five dollars.

That on May 1, 1881, the said commissioners did cause to be prepared from the said books assessment-rolls, in the manner provided by law, upon which rolls appeared the name of the said F. A. Palmer as a stockholder of said bank, the sum last above named being thereon stated as the assessment of the shares of stock therein owned by him, and did duly certify to the correctness of said rolls.

That thereafter and on the first Monday of July, 1881, the
3 said rolls thus certified were delivered by the said commissioners to the board of aldermen of the city of New York.

That immediately after the said delivery the said commissioners gave public notice that the said rolls had been finally completed; that the same had been delivered to the said board of aldermen, and that the same would be open to public inspection in the office of the clerk of the board of aldermen for a period of fifteen days from the date of said notice; said notice being given by publication thereof in the City Record, the New York Star, and the New York Evening Post, newspapers published in said city, for fifteen days consecutively, beginning July 5, 1881.

That thereafter (in the name of said board of aldermen and as its act) there was duly estimated and set down by the officer charged by law with that duty, in the proper column in said assessment-rolls, opposite to the several sums set down thereon as the valuation of real and personal property, the respective sums, in dollars and cents, to be paid as a tax thereon, there being set down opposite to the said assessed valuation of the said shares of stock owned by said F. A. Palmer the sum of 4,994.63 dollars as such tax.

That thereafter and on October 13, 1881, the said board of aldermen did by ordinance duly confirm the said assessment so reduced as aforesaid, and did duly impose upon said F. A. Palmer, as a stockholder in said bank, a tax of $4,994.63 for the year 1881.

That on the 24th day of October, 1881, the corrected assessment-rolls, showing said assessment and amount of said tax, were delivered to your petitioner, as receiver of taxes, with a warrant
4 by the board of aldermen, under their hands and seals, annexed thereto, directed to your petitioner as such receiver of taxes, and commanding him to collect said tax, which warrant was in due form of law; that immediately after receiving the said assessment-rolls your petitioner, as such receiver, gave public notice in twelve of the public newspapers printed in the city of New York that the said assessment-rolls had been delivered to him, and that all taxes were then due and payable thereon, and that in cases of payment of such taxes on or before the first day of November, 1881, there would be deducted therefrom seven per cent. thereof per an-

num for the period between the date of such payments and the first day of December then next succeeding.

That, beginning on the first day of November, 1881, and for ten days thereafter, your petitioner, as such receiver, gave public notice, by advertisement in twelve of the public newpapers, including the City Record, published in the city of New York, that unless the taxes which at that time remained due and unpaid were paid to him, at his office, on or before the first day of December, 1881, he would immediately thereafter proceed to collect such unpaid taxes in the manner provided by law.

That immediately after the first day of December, 1881, your petitioner, as such receiver of taxes, gave public notice in six of the daily newspapers printed and published in the city and county of New York, respectively, for ten days, notifying all persons who had omitted to pay their taxes to pay the same at his office on or before the first day of January, 1882; that the above-named F. A. Palmer
5 has in part neglected to pay said tax, and the sum of thirty-six hundred and eighty-four $\frac{63}{100}$ dollars on account of the same, with interest and percentage and expenses provided by statute, is still unpaid; that, subsequent to the 15th day of January following the year in which said tax was imposed, a warrant was issued by your petitioner, as such receiver of taxes, under his hand and seal, in due form of law, to one of the marshals of said city and county for the collection of said tax; that the said marshal has returned said warrant unsatisfied, except as to the sum of thirteen hundred and ten dollars; that there are no goods or chattels in the possession of said person so taxed upon which said tax might be levied by distress and sale according to law; that said marshal, by virtue of said warrant, demanded payment of said tax from the said person so taxed, which was refused as to $3,684.63; that one year has not elapsed since the said refusal or the return of said warrant by said marshal; that your petitioner, as such receiver of taxes, has reason to believe that the said person so taxed has debts, credits, choses in action, or other personal property not taxed elsewhere in the State of New York upon which levy cannot be made according to law.

Wherefore your petitioner, as such receiver of taxes, applies to the court, pursuant to the statute, to enforce the payment of said tax, with interest at the rate of seven per cent. per annum, to be calculated from the said 24th day of October, 1881, and the percentage and expenses provided by law, together with the costs of this application.

Dated July 17, 1882.

M. T. McMAHON,
Receiver of Taxes.

6 CITY AND COUNTY OF NEW YORK, *ss:*

Martin T. McMahon, being duly sworn, says that he is the petitioner named in the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. —— ——.

Sworn to before me this 17th day of July, 1882.
J. J. TOWNSEND, JR.,
Notary Public, County of N. Y.

Court of Common Pleas for the City and County of New York.

In the Matter of the Petition of MARTIN T. McMAHON, as receiver of taxes in the city of New York, to enforce the payment of the tax imposed for personal property upon F. A. Palmer.

7 On the foregoing petition of Martin T. McMahon, as receiver of taxes in the city of New York, to enforce the payment of the tax for personal property imposed upon F. A. Palmer and mentioned in said petition, it is hereby ordered that said F. A. Palmer personally appear and attend at a special term of this court, to be holden at the chambers thereof, in the county court-house, in the City Hall Park, in said city, on the 27th day of July, 1882, at eleven o'clock (call of the calendar) in the forenoon of that day, and show cause why he should not be punished for his misconduct in neglecting and refusing to pay said tax imposed on him for personal property, and why the court should not make such an order in the premises to enforce the payment of said tax, with interest as provided by law and the costs of this application, as may be proper, or why the petitioner should not have such other and further relief as may be proper.

GEORGE M. VAN HOESEN, *F. C. P.*

8 Court of Common Pleas for the City and County of New York.

In the Matter of the Petition of MARTIN T. McMAHON, as receiver of taxes, to enforce the payment of the tax for personal property imposed upon F. A. Palmer.

COUNTY OF NEW YORK, *ss:*

Francis A. Palmer, being duly sworn, doth depose and say that he is the president of and a stockholder in the National Broadway Bank, and has been such ever since the 10th day of January, 1865, when the Broadway Bank, organized under the laws of the State of New York, became the National Broadway Bank, organized under the laws of the United States.

That on the 17th day of July, 1882, he was served with a copy of a petition entitled as above, bearing date July 17, 1882, together with a copy of an order to show cause, entitled in the same manner.

9 That from the 1st day of May to the 1st day of November, 1880, he was a resident of the town of Stamford, in the State of Connecticut; from the 1st of November, 1880, to the 1st of May, 1881, he was a resident of the Twenty-first ward, in the city of New York, and from the 1st of May, 1881, to the 1st of November, 1881, he was a resident of the town of Stamford, in the State of Connecticut, and for the balance of the year was a resident of the Twenty-first ward, in the city of New York.

That in the year 1881 and for some time prior thereto the National Broadway Bank was a bank organized under the laws of the United States, but not of the State of New York, and located and doing business in the Third ward of the city of New York.

That on the first Monday of September, 1880, he owned 5,543 shares of the capital stock of the said bank; on the first day of January, 1881, he owned 5,503 shares of the said capital stock, having sold forty shares of the said capital stock on the 7th day of September, 1880, to James T. Swift; and on the second Monday of January, 1881, he owned 5,463 shares of the capital stock of the said bank, having sold forty shares thereof on January 4th, 1881, to Samuel A. Sawyer, reducing the 5,503 owned previously to 5,463 shares.

That neither the said 5,463 shares of the capital stock nor any shares of the capital stock owned by deponent were duly assessed for the year 1881 at the valuation of $247,635, for the grounds stated in the demand heretofore served upon the commissioners of taxes and assessments in the city of New York, and a copy of which is hereunto annexed.

10 That the facts stated in the said demand are true to deponent's knowledge.

That the said assessed valuation was by the said commissioners not duly entered in the books called "The Annual Record of the Assessed Valuation of Real and Personal Estate" for the year 1881, but in a mere list of stockholders, as will fully appear by the production of the same.

That there was no "annual record of the assessed valuation of real and personal estate" for the year 1881 with respect to said shares in the capital stock of the National Broadway Bank owned by deponent kept in the office of the said commissioners, but only a mere list of stockholders, and the same was not kept open for examination and correction from the second Monday of January, 1881, until the first day of May, 1881.

That deponent never saw any advertisement that any books of the said commissioners were open, and is informed and believes that the City Record is not a newspaper in the common acceptance of that term, but a mere bulletin of official transactions, having a very limited circulation in the city of New York only.

That before April 30, 1881, deponent received notice in the words and figures following:

DEPARTMENT OF TAXES AND ASSESSMENTS,
CITY HALL PARK, 32 CHAMBERS ST.,
NEW YORK, *January 10th*, 1882.

Mr. Francis A. Palmer, No. 237 Broadway, N. Y. city:

You are hereby notified that your personal estate for 1881
11 is assessed at $10,000, and that the same, if erroneous, must be corrected before the commissioners on or before the 30th day of April next or it will be confirmed at that amount, from which there will be no appeal.

By order of the board.

ALBERT STORER, *Secretary.*

That before April 30th, 1881, deponent not only made application for a reduction of the valuation of all the shares of stock in said bank by service of said demand, but personally called upon the said commissioners, at their office, and requested them to comply with the said demand, and protested against any valuation contrary to the said demand, and offered to make any further affidavit they might require; at which time the said commissioners offered to allow deponent to make an affidavit as to the value of the shares of stock in the said bank and as to any indebtedness he might have, and to that extent they would receive his affidavits; whereupon deponent made an affidavit as to the value of the said shares and also one as to an indebtedness of $57,000 he had, and believes that is the reduction referred to in the petition of the receiver of taxes; that as to the number of shares he was owner of at that time he relied upon the statement of the commissioners, and now finds that the same was incorrect and should have been 5,463 instead of 5,503.

That deponent is informed, and believes the same to be true,
12 that the assessment-rolls, so called, are very informal and do not contain his name, but that all the capital stock of the National Broadway Bank is enrolled under the name of the bank, as will fully appear by the production of the same.

That the board of aldermen did not duly confirm the assessment in the petition mentioned and did not duly impose upon deponent as a stockholder in said bank a tax of $4,994.63 for the year 1881, or any tax whatever, and the said assessment was not confirmed.

That prior to November 1, 1881, deponent sent to the office of the receiver of taxes for his tax bills and received no other bill for tax on personal estate except the one hereunto annexed, and that the deponent sent his check for the same and the same was paid.

That thereafter, in the early part of 1882, deponent received a similar bill, but rendered against the National Broadway Bank, containing a valuation of its capital stock, with the request that he would send a check for the same to the receiver of taxes.

That thereafter, in the early part of 1882, deponent was informed by one of the marshals of the city of New York that he held a warrant against deponent for the collection of a tax on his personal estate for the sum of $4,994.63, which was the first notice of the amount of said tax deponent ever received and the first notice that the mayor, aldermen, and commonalty of the city of New York had determined to pursue the individual stockholders in the place and stead of the bank as a corporation.

That on the 10th day of January, 1865, the National Broad-
13 way Bank was organized under the laws of the United States; that the capital stock was one million of dollars, and of which deponent was the owner of 4,000 shares; that in order to secure circulation deponent purchased for the bank one million of the bonds issued by the United States under the act of June 30, 1864, commonly known as 5-20 bonds, and which act declared "all bonds, Treasury notes, and other obligations of the United States shall be exempt from taxation by or under State or municipal authority," and deposited the same with the United States Treasury to secure

circulation; that as those bonds were called in deponent purchased from time to time other bonds issued by the United States under the act of July 14, 1870, commonly known as the 5's of 1881, 4½'s of 1891, and 4's of 1907, and which act declared "all of which said several classes of bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States, as well as taxation in any form by or under State, municipal, or local authority, and the said bonds shall have set forth and expressed upon their face the above-specified condition," and substituted the same from time to time in the place of others with the U. S. Treasury to secure circulation; so that on the 10th day of January, 1881, the entire capital stock of the National Broadway Bank, being one million of dollars at its par value, was invested in bonds issued under the act of July 14, 1870, which expressed upon their face the said specified condition of exemption from all taxation; that 5,463 shares of the capital stock of the National Broadway Bank at their par value, $25, all invested in United States bonds as aforesaid,
14 amounts to $136,575 without any estimate of the premium thereon, which, being deducted from $190,635, the assessed value for taxation, less $57,000 of debts, leaves the sum of $54,060, upon which the tax .0262 per cent. amounts to about $1,400; or, if the premium at that time upon the bonds be taken into account and being also deducted, would leave a sum much less than $54,060, upon which the tax would amount to much less than $1,400.

That the individual citizens of this State have always been allowed to deduct their Government bonds in assessing the value of their taxable personal property, and although the assessment upon bank stock is at a greater rate than is made upon investments in real estate or any other enterprise, and although the National Broadway Bank stock is valued higher in proportion than some other bank stocks, notably the stock of the Importers' and Traders' National Bank, which is valued at $115 only upon a par value of $100, while the National Broadway Bank stock is valued at $180 upon a par value of $100, being rated at $45 on a par value of $25, and which stock of the Importers' and Traders' National Bank has a larger market value and a larger value upon its books than the shares of the capital stock in the National Broadway Bank, and although there were many technical grounds to the payment of the same, yet this deponent, believing it was more than was due upon the merits of the claim, sent to the receiver of taxes his check in the words and figures following:

15 No. 1913. NEW YORK, *May* 9, 1882.

National Broadway Bank

Pay to the order of Martin T. McMahon, receiver of taxes, fourteen hundred dollars ($1,400) in current funds.

F. A. PALMER.

and the same was paid, and supposed that amount would be satisfactory to the authorities, under the circumstances of the case, until

the petition and order to show cause in the above-entitled matter was served upon him.

That hereunto annexed is a copy of the semi-annual return by the National Broadway Bank to the United States Government for the six months next preceding the first day of January, 1881, with the tax thereon, which was paid to the United States Government.

That shares in the capital stock of this bank is [are] assessed at its [their] full market value, while real estate is assessed at about sixty per centum of its value, and personal estate, with the exception of bank stock, is assessed at a much less rate. Individual citizens engaged in the business of private banking are always allowed to deduct their bonds of the United States in assessing the value of their personal property, as well as all other individual citizens, save only the stockholders of banks. Corporations owning bank stock are not taxed with the other stockholders, but are taxed as a corporation and allowed to deduct their bonds of the United States in assessing the value of their capital stock.

That the 5,463 shares of the National Broadway Bank belonging to deponent on the 10th of January, 1881, were not allowed
16 all the deductions and exemptions allowed by law, for that in assessing the value of other taxable personal property owned by other individual citizens of this State such individual citizens were allowed to deduct their Government bonds and have the same exempted, whereas this deponent was not allowed to deduct that part of his personal property or bank shares which was invested in Government bonds, or to receive exemption for the same.

That the said 5,463 shares of the National Broadway Bank were assessed and taxed at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State, for that deponent and other stockholders of bank shares had other moneyed capital invested in fire-insurance companies, railroad corporations, gas companies, and other corporations assessed and taxed under chap. 542, Laws of 1880, at a very moderate rate upon their par value, and by section 8 of that act were exempted from all other assessment or taxation; so that the assessment and taxation of deponent's personal property or bank shares at their full value, nearly double their par value, works an assessment and taxation at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State, even if the rate remained the same as to both classes of personal property, whereas the rate upon the moneyed capital invested in other corporations than national banks, by the very terms of chap. 542, Laws of 1880, is at a much less rate.

That this deponent has no debts, credits, choses in action, or other personal property not taxed elsewhere in the State of New York or not taxed anywhere, but is a tax-payer upon all his property,
17 real and personal, and only claims the deductions and exemptions to which he is justly entitled.

And, further, deponent saith that there is no law for the taxation of moneyed capital in the hands of individual citizens of this State when invested in the shares of other corporations than banks, and

the authority to tax moneyed capital in the shares of banks as other moneyed capital in the hands of individual citizens of this State when invested in other corporations than banks is taxed confers no authority, since any tax upon bank shares must necessarily be at a greater rate than taxes on shares in other corporations than banks not taxed.

F. A. PALMER.

Sworn to before me this 5th day of Sept'r, 1882.

JAMES F. DOYLE,
Notary Public, N. Y. Co.

To Hons. Thomas B. Asten, John N. Hayward, and George B. Vanderpoel, commissioners of taxes and assessments of the city and county of New York:

(A.) Demand is hereby made upon you by the National Broadway Bank, located in the city of New York, in the Third ward, on behalf of the said bank, and also on behalf of all shareholders of said bank whose names appear as shareholders therein upon the 10th day of January, 1881, upon the list of shareholders of said bank in your possession or upon any books in your office claimed by you to be part of "The Annual Record of the Assessed Valua-
18 tion of Real and Personal Estate for the Year 1881," that you strike the names of all shareholders of said bank from the "Annual Record of Assessed Valuation of Personal Estate, Third Ward, National Broadway Bank," and from the "Annual Record of the Assessed Valuation of Real and Personal Estate for the Year 1881," in your office, as any one of said shareholders thereon appears to be assessed by reason of his ownership of stock in said bank; and that you also strike therefrom the assessed value of the stock of said bank owned by each of said shareholders, respectively, on the said 10th day of January, 1881, as the same appears upon the said books in your office; and if the name of any one of said shareholders has been placed upon the "Annual Record of Assessed Valuation of Real and Personal Estate" in your office for the year 1881 in consequence of an assessment by reason of the ownership, both of shares in said bank and of other personal property, that you reduce the assessment of every one of such shareholders to the assessed value of such other personal property by deducting from his assessment of personal property the assessed value of the stock in said bank owned by him on the 10th day of January, 1881. You are respectfully referred to the said list of shareholders in your possession, which is hereby made a part of this application.

This demand is made upon the following grounds, among others:

First. That the shares in the said bank owned by each of said shareholders on the 10th day of January, 1881, have not been in-
cluded in the valuation of personal property of the owner or
19 holder of such shares in assessing such property by authority of the State of New York.

Second. That the Legislature of the State of New York has not determined and directed the manner and place of taxing all the

shares of National Banking Associations located within the State in accordance with the provisions of section 5219 of the Revised Statutes of the United States.

Third. That the shares in said bank owned by each of said shareholders on the tenth day of January, 1881, have been assessed at a greater rate than is assessed upon other moneyed capital in the the hands of individual citizens of this State.

Fourth. That no one of the said shareholders of the said bank was liable on the tenth day of January, 1881, or at any time subsequent thereto has been liable to be assessed for taxation by authority of the State of New York by reason of his ownership of stock in said bank.

Fifth. That no one of said shareholders in said bank has been assessed for the year 1881 by reason of his ownership of stock in said bank, in the manner or within the time prescribed by law.

Sixth. That the assessment of each of the shareholders of said bank with respect to the shares of stock owned by such shareholders on the tenth day of January, 1881, and the entry of the name of each of such shareholders and of the assessed value of his shares in said books or so-called "Annual Records" were erroneous, illegal, void, and without jurisdiction.

(B.) In the event that you refuse the foregoing application and demand, marked A, demand is hereby made by said bank as
20 aforesaid upon you to reduce the assessed value of each share of the capital stock of this bank to ten dollars.

This demand is made upon the following grounds:

The assessed value of each share of stock of this bank has been fixed by you at forty-five dollars, exclusive of the real estate owned by the bank, and the entire assessed value, as fixed by you, of the shares of stock of this bank, exclusive of real estate, is one million eight hundred thousand dollars.

On the tenth day of January, 1881, one million four hundred thousand dollars of the capital and surplus of this bank were invested in stocks, bonds, Treasury notes, or other obligations of the United States exempt from all taxation, and on the said tenth day of January, 1881, the shares of stock of this bank then represented an ownership by the said shareholders in said obligations of the United States to the said amount of one million four hundred thousand dollars.

(C.) In the event that you refuse the foregoing demand and application, marked B, demand is hereby make by said bank as aforesaid upon you that you reduce the assessed value of each share of stock of this bank to the amount of twenty-seven dollars, being sixty per cent. of the assessed value of each share of stock, exclusive of real estate, as fixed by you.

This demand is made upon the following grounds:

The said shares of stock have been unequally assessed and illegally and erroneously overvalued, for the reason that large amounts of personal property other than bank shares have been over-
21 looked and not discovered for the purpose of assessment, and not assessed by the deputy tax commissioners or by your-

selves for the year 1881, and no proper or adequate means of discovering the existence and the value of such personal property and of assessing it have been employed by the said deputy tax commissioners or by yourselves, whereas such personal property might have been discovered and assessed by diligent inquiry on the part of said deputy tax commissioners and of yourselves; and also for the reason that real property in the city of New York has been generally assessed for the year 1881 at not more than sixty per cent. of the sum for which such property, in the judgment of the deputy tax commissioners of the city of New York, under ordinary circumstances would sell.

Dated New York, April 25th, 1881.

FRANCIS A. PALMER, [L. S.]
President.

FRANCIS A. PALMER,
On His Own Behalf and Behalf of Others.

CITY AND COUNTY OF NEW YORK, *ss:*

Francis A. Palmer, being duly sworn, deposes and says that he resides at No. 180 Madison avenue, in the city of New York, and is president of the National Broadway Bank of the City of New York; that he knows the corporate seal of the said bank, and that the seal affixed to the foregoing application is the corporate seal of the said bank, and that the same is affixed thereto by its authority, and that he signed his name thereto by like authority.

That the facts stated in the foregoing application with re-
22 spect to the amount of the capital and surplus of said bank invested, on the tenth day of January, 1881, in stocks, bonds, Treasury notes, or other obligations of the United States are true to deponent's knowledge.

FRANCIS A. PALMER.

Sworn to before me this 26th day of April, 1881.

WILLIAM HILDRETH FIELD,
Notary Public.

Taxes confirmed October 13th, 1881, at 12 o'clock and 38 minutes p. m. Francis A. Palmer. No money received after 2 o'clock. Office hours from 8 a. m. till 2 p. m. All payments must be made at the cashier's window. Money in envelopes will not be received.

CITY OF NEW YORK, DEPARTMENT OF FINANCE,
BUREAU FOR THE COLLECTION OF TAXES.

To the mayor, aldermen, and commonalty of the city of New York:

For taxes, 1881.

NOTE.—One per cent. will be added on the first day of December on taxes remaining unpaid.

Ward.	Line.		Valuation, dolls.	Rate per cent.	Tax.
R.	1680	To tax on personal estate	10,000	2.62	262 00
		At No. 237 Broadway.			1 75
					260 25

Hart Parke, B. B. Oct. 27, 81.

23 *Deduction.*

A deduction at the rate of 7 per cent. per annum, calculated from the date of payment to the 1st of December, will be made on all taxes paid previous to the 1st day of November.

Received payment.

A. VREDENBURGH,
Dep. Receiver of Taxes.

Please preserve this bill.

Information for Tax-Payers.

I. Valuations of property.—The aggregate taxable valuations of property within the city and county of New York, as estimated for the year 1881, are as follows:

Real estate		$976,735,199 00
Personal estate, viz:		
Belonging to residents	$138,613,030 00	
Belonging to non-residents	12,175,475 00	
Shareholders of banks	58,424,394 96	
		209,212,899 96
Total		$1,185,948,098 96

II. Amount and rate of taxes and when levied.—The amount of taxes imposed by ordinance adopted at 12 o'clock and 38 minutes p. m. on Thursday, October 13, 1881, was $31,071,840.19. The rate of tax is 2.62 per cent.—that is to say, $2.62 on $100, $26.20 on $1,000. The following shows the purposes for which the taxes were levied:

For State taxes		$4,270,760 00
For expenses of the city government, viz:		
Interest on the city debt*	$8,240,965 45	
Redemption of city debt	664,377 12	
The common council	64,250 00	
The mayoralty	30,000 00	
Department of finance	205,370 70	
24 Law department	143,478 00	
Department of public works	2,464,850 00	
Department of public parks	703,500 00	
Department of public charities and correction	1,512,416 00	
Health department	307,063 32	
Police department	3,400,740 00	
" " (cleaning streets)†	735,000 00	
Department of street cleaning	251,715 05	
Fire department	1,568,959 00	
Board of education	3,620,095 00	
College of the City of New York	140,000 00	
Department of taxes and assessments	100,600 00	
The judiciary	1,208,883 38	
Advertising, printing, stationery, and blank books	171,200 00	
Asylums, reformatories, and charitable institutions	1,026,158 31	
Election expenses	161,150 00	
Judgments	350,000 00	
Miscellaneous	417,673 81	
		27,488,445 14
Total appropriations for 1881		$31,759,205 14
Less amount supplied from the general fund, estimated at		1,500,000 00
		$30,259,205 14
Add to supply deficiencies, viz:		
Estimated deficiency in product of the taxes of 1881 from erroneous assessments, insolvencies, &c.		812,635 05
Total taxes for 1881		$31,071,840 19

* Exclusive of the amount by law chargeable to the sinking fund for the payment of interest on the city debt.

† The sum of $334,118.26 was transferred to the department of street cleaning.

25 III.—*Directions as to the Payment of Taxes.*

1. Tax bills.—Persons applying for bills of taxes are requested to state whether the tax is upon personal or real estate, and before paying any tax bill the same should be carefully examined to see that it embraces all the property on which taxes are intended to be paid, and that there are no mistakes in the ward numbers of the real estate stated thereon.

2. Real estate is described and distinguished on the ward maps kept in the office of the commissioner of taxes and assessments by a separate block and ward number, and persons applying for bills of taxes on real estate should be careful to state the correct ward number as shown on the ward maps, which can be readily referred to by applicants for bills.

3. Erroneous assessments.—The commissioners of taxes and assessments have power to correct an assessment by remitting or reducing the tax before its collection. The application therefor must be made to these commissioners within six months from the time the tax books are delivered to the receiver for examination; and no tax on personal property shall be remitted, cancelled, or reduced unless the party aggrieved shall satisfy the commissioners that he has been prevented, by absence from the city or illness, from making his complaint or application to them within the time allowed by law for the correction of taxes.

4. Discount allowed for prompt payment.—Persons who
26 pay their taxes before the first day of November next are entitled to a discount at the rate of seven per cent. per annum, to be computed from time of payment to the first day of December next succeeding.

5. Penalties for non-payment.—If any tax is not paid before the first day of December one per cent. will be added to it. If not paid before the first day of January, interest is charged at the rate of seven per cent. per annum from the day the books are delivered to the receiver of taxes; and if not paid by the fifteenth day of January he may issue his warrant for the collection of personal taxes by distress and sale.

Please Read This.

TREASURY OF THE UNITED STATES.

In view of the numerous errors and omissions by national banks in making up and transmitting their semi-annual statements, it is deemed advisable to enumerate some of those which are most common and to suggest methods by which they may be avoided.

Errors in Making up Statements.

1. Including "surplus" or "undivided profits" with "deposits" or "capital stock."

2. Omitting to fill the blanks relating to the average amount of

paid-up capital stock and the average amount of United States bonds owned by the bank.

27 3. Computing the duty at other than the regular rates. (Items which are liable to duty for only a portion of the semi-annual term must be averaged for the whole six months of the term and the duty computed thereon at the regular rates.)

4. Clerical errors in computing duty, and the omission of the proper signatures to returns.

5. Deducting from deposits the five per cent. deposited with Treasurer U. S. as a redemption fund.

Errors in Remitting.

1. Remitting money (in payment of duty) to any other officer of this Department than the Treasurer of the United States.

2. Drawing certificates in favor of bank officers instead of in the name of the bank making the deposit.

3. Non-observance of instructions in reference to sending certificates of deposit for duty. (The "original" to Secretary of the Treasury; "duplicate" to Treasurer of the United States; "triplicate" to be held by bank making the deposit.) See foot-note on the face of this blank.

Frequent mention has been made of the fact that the numbers of national banks stated upon papers issued by the Treasurer are not always the same as those given by the Comptroller of the Currency for the same banks. This is of no special importance, each office having numbered the banks to suit its own convenience.

It is respectfully urged upon bank officers that all the printed instructions contained in this blank be carefully read and understood before making up returns.

[Treasurer's Office. Form 23. National Banks.]

Statement of the average amount of notes in circulation, of the average amount of deposits, and of the average amount of capital stock beyond the amount invested in United States bonds of the National Broadway Bank of New York, State of New York, for the six months next preceding the first day of January, 1881, with the duty thereon. pursuant to the provisions of section 5215, Revised Statutes of the United States.

		Dutiable amounts.	Rate of duty.	Amount of duty.
Circulation.—Amount of circulating notes received from the Comptroller of the Currency	$900,000			
Average amount of notes in circulation		$898,267	One-half of one per cent.	$4,491 33
Deposits.—Average amount of deposits, estimated from balances at the close of business each day and before the "exchanges" or "settlements" of the next day, including all balances which are subject to payment on check or draft or on return of certificate of deposit, whether made by individuals, banks, savings banks, bankers, by disbursing or other officers of the United States, or by States, cities, or towns; whether certificates or certified checks have been issued therefor or not, collections made on account of other banks; and, in fact, all descriptions of deposits which may be used by the bank, including deposits upon which the bank pays interest, whether any part of either of such items is directly in the possession of the bank or in the hands of an agent or agents, excluding only from the balance of any day's deposits such checks on city banks as were deposited on that day for collection with the understanding that the money was not to be drawn from the bank until the next day	4,527,296			
Less the average amount on deposit to the credit of the Treasurer of the United States (deposits to the credit of any other officer of the Government not being included, and this deduction to be made only by such banks as are designated depositaries of the United States)		4,527,296	One-quarter of one per cent.	11,318 24
Capital stock.—Average amount of paid up capital stock	1,000,000			
Less { The average amount invested in United States bonds deposited as security for circulation $1,000,000				
Less { The average amount invested in United States bonds deposited as security for Government deposits				
Less { The average amount invested in United States bonds owned by the bank other than the above	1,000,000		One-quarter of one per cent.	
Total amount of duty				$15,809 57

I, —— —— of the —— National —— Bank of ——, do solemnly swear that the above account, made up from the books of said association, contains, to the best of my knowledge and belief, a true and faithful statement of the amount of duty which has accrued during the time above stated and according to the provisions of the section aforementioned.

—— ——, —— *National* —— *Bank of* ——.

Subscribed and sworn to before me this — day of ——, 188-.

—— ——.

[Ed. 11-2-'80—4,600.]

☞This return, with each blank filled with the proper amount, as indicated, must be sent to the Treasurer of the United States within ten days from the first days of January and July, respectively, in each and every year, under a penalty of two hundred dollars, and payment made to the Treasurer of the amount of duty within the months of January and July, as above. Payment may be made by deposit of the amount of duty, to the credit of the Treasurer of the United States, with any assistant treasurer or United States depositary, including all national banks designated as depositaries. Triplicate certificates should be issued therefor, the original of which must be forwarded to the Secretary of the Treasury, the duplicate to the Treasurer, and the triplicate held by the bank making the deposit as its voucher for the payment, for which no other receipt will be issued. The certificate must state that the deposit is "on account of 'semi-annual duty:'" otherwise it will be returned for correction. If there is no depositary convenient to the bank, payment may be made by draft on New York, to the order of the Treasurer, or by remittance to him of the amount in lawful money of the United States or notes of the national banks. When the money is received the Treasurer will issue his certificate of deposit, a duplicate of which will be sent to the bank.

Form 23. Semi-annual return —— National —— Bank, State of ——, for the six months preceding Jan'y 1st, 1881.

FRANCIS A. PALMER VS.

29 New York Common Pleas.

In the Matter of the Application of MARTIN T. McMAHON, Receiver of Taxes, *against* FRANCIS A. PALMER.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward C. Donnelly, being duly sworn, deposes and says: I am now, and since December 17th, 1881, have been, one of the commissioners of taxes and assessments of the city of New York. I have read the affidavit of Thomas B. Asten, taken in this proceeding on September 1, 1882, and the various exhibits annexed thereto. The statements contained therein are true, of my own knowledge, as to the period of time during which I have been such commissioner, and I am informed and believe them to be true as to the period of time prior to my appointment as commissioner, the sources of my information and the grounds of my belief being the records of the department of taxes and assessments and of the department of finance and statements made to me by the deputies and clerks employed in this department, which statements I verily believe to be true.

EDW'D C. DONNELLY.

Sworn to before me this first day of September, 1882.

FLOYD T. SMITH,
Notary Public (267), *N. Y. Co.*

30 New York Common Pleas.

In the Matter of the Application of MARTIN T. McMAHON, Receiver of Taxes, *against* FRANCIS A. PALMER.

CITY AND COUNTY OF NEW YORK, *ss:*

Thomas B. Asten, being duly sworn, deposes and says: I am now, and since January 1, 1881, have been, president of the department of taxes and assessments of the city of New York. It appears by the records of said department and of the department of finance of said city that since the passage of the act of the Legislature of this State, chapter 761, Laws of 1866, shares in national and State banks doing business in the city of New York have been assessed to individual stockholders as their personal property; but the gross amount of the tax levied upon the stockholders for each particular bank has been paid down to 1880, as I am informed and believe, in one sum by the bank itself. The course of procedure has been, as appears by such records and as I am informed and believe, for the commissioners of taxes and assessments to send a separate book to

each bank, the officers of which would thereupon insert the names of the stockholders of the bank to which the book was sent, the number of shares owned by each stockholder, the amount of capital of the bank, and the value and cost of the real estate owned
31 by it; and, as I am informed and believe, each of such books was then returned by the banks to the tax commissioners, who thereupon, after deducting the cost or value of such real estate, fixed the value of the shares of each bank and extended the books so as to show the amount for which each stockholder was assessed.

The assessment in every case has been upon the individual shareholders, not upon the bank. From these books so prepared, and from the other records of personal estate, the assessment-rolls (except as hereinafter stated) have been, since the passage of the act of 1866, prepared and sent to the supervisors, and the tax payable by each stockholder has been extended in such rolls opposite the name of each individual. Subsequently, when the taxes became due, the several banks have, as I am informed and believe (with one or two exceptions), in each year since 1866 and down to 1880, sent checks for the whole amount of the tax imposed upon their respective stockholders.

The course of procedure above described was followed in making up the annual record of assessed valuation of personal estate for 1881, except that in cases where such stockholders were residents of the ward in which the bank was located and their names appeared on the annual record of assessed valuation of personal estate such names were erased from the books received from the bank and the assessment of the bank stock was added to the assessment of such stockholder for other personal property, and the name of such stockholder appeared but once on such annual record; and the oath required by law having been made and attached to each of such books, and the commissioners themselves having taken such
32 further action in relation to the same as was required by law, said books became and were treated as a portion of the annual record of the assessed valuation of personal estate for the year 1881, which the commissioners were required to keep in their office by section 8 of chapter 302 of the Laws of 1859. There are now in the office of the tax commissioners seventy books of the description above set forth, containing the names of about 20,978 stockholders of banks doing business in the city of New York, each of which stockholders, except as hereinafter stated, has been individually assessed on account of shares in such bank. From these books the assessment-rolls for the year 1881 (in the manner more particularly described hereafter) were prepared in manner above described and sent to the board of aldermen, and the tax imposed for the year 1881, on account of shares in banks doing business in this city, was not upon any bank, but upon the individual stockholders of each bank.

Prior to the second Monday of January application was made to the respondent herein, as president of the National Broadway Bank, for the book before referred to, containing the names of the stockholders, number of shares, &c.; but the said respondent refused to

give such book, but stated that he would allow a clerk of the said department to inspect and copy the list of stockholders kept in said bank, in compliance with § 4 of chapter 596 of the Laws of 1880.

That thereupon such copy was made by a clerk of the said department, and from the said copy so made the annual record of assessed valuation of personal estate, so far as the same was concerned
33 with the shares of stock of the said National Broadway Bank, was compiled by the deputy assigned to that duty by the commissioners of taxes and assessments in said city and under their direction.

The annexed Exhibit AA is a true copy of the said record, except that only enough names are spread out thereon to indicate the manner of preparing the same. The explanations at the foot of said exhibit, signed with the initials of this deponent, are true explanations of the manner in which said record was prepared.

The said Exhibit AA, together with all other books constituting the annual record of assessed valuation of real and personal estate, was kept in the office of the commissioners of taxes and assessments, and was open for examination and correction from the second Monday of January, 1881, until the first day of May, 1881. Previous to and during the time said record was open as aforesaid the commissioners did advertise the fact in the City Record, such being the manner of advertisement deemed by the commissioners most advisable.

During such period and on the 12th day of April, 1881, the respondent, as president of said bank, took the affidavit contained in Exhibit AA, and on the same day took the further affidavit hereto annexed and marked Exhibit BB.

Subsequent to April 30th, 1881, the commissioners did cause to be prepared from the various books which comprised the annual record of assessed valuation for the said year the assessment-rolls in the manner provided by law.

In this county, for convenience of examination, correction, and action, the assessment-rolls are kept in large books, and these books, verified and certified in the manner provided by law, are
34 transmitted to the board of aldermen of the city of New York, and formerly were transmitted to the supervisors in the said county. The various books constituting the annual record of assessed valuation and the books constituting the assessment-rolls for each year have been and were in the year 1881 thus prepared.

As to Real Estate.

In a large book, properly divided into columns, as required by the statute, the deputy tax commissioner having charge of each particular ward enters the description of the real estate and what he believes to be the value thereof. This is done prior to the second Monday of January, and from that time to the 30th of April the said book is open for correction, and as corrections are made by the tax commissioners they are noted in the proper column.

The real estate enumerated in said book is not assessed at 60 per

cent. of its value or at any sum less than its full value by intention or in accordance with any rule or direction of the tax commissioners. It is the endeavor of the said commissioners and of the deputies employed by them to ascertain and set down the full and fair value of the property; and, in order to accurately ascertain such value, lists are kept of all reported sales of real estate in the vicinity of the parcels assessed, and from an examination of such sales and such other information as is obtainable the valuation is determined.

If, in any instance, said valuation is, as matter of fact, less than the full value of the parcel, that circumstance is due to the fact that the best endeavors of the commissioners and their deputies have not succeeded in determining the exact value of the property.

To the knowledge of this deponent there have been many instances where real estate has been assessed at a valuation greater than the same parcel of real estate has sold for within the current year.

The various corrections having been made, a transcript of the book of the ward containing the corrected valuations, and certified, as required by the statute, is and always has been considered and acted upon as the assessment-roll for the ward, and the said book, with the other books containing the taxable real estate, and the books hereinafter referred to, containing the personal property, together constitute what has always been considered and acted upon as the assessment-rolls of the year.

As to Personal Property.

In assessing personal property, including moneyed capital in the hands of individual citizens in this State, no distinction in the rate at which the same is assessed, as against different individuals and corporations, is recognized or adhered to by the commissioners or their deputies, intentionally or by the direction of said commissioners. From such sources of information as are available to the deputies in charge of personal estate, the valuation of each individual's and corporation's personal tax is determined, and his or its name entered on the books kept in the office for the purpose. Besides the books of bank stockholders already referred to, these books are three in number, two of them containing residents and one of them non-residents. The name of any particular individual having been entered in the books, the same are open for examination and corrections from second Monday of January to April 30th, and that fact is advertised in the City Record.

Upon the appearance before the commissioners of any person or corporation desiring to have a correction made in his or its assessment, the person appearing is then examined by them or one of them, under oath, in detail, as to his or its personal property, debts, &c., and the corrected valuation of his or its assessments is based on the results of such examination. If no person appears to correct his or its assessed valuation of personal property, and any facts come to the knowledge of the commissioners, subsequent to the

valuation for any particular year, indicating that the assessment is too low, the commissioners or their deputies in charge of the assessment for personal taxes increase the valuation against the individual for the ensuing year.

In this way efforts are constantly being made by the commissioners to make the assessments for personal taxation uniform, and if, as a matter of fact, there are instances where moneyed capital in the hands of individual citizens of this State is not assessed at its full value, or is assessed at a greater rate than are the shares of the various banks doing business in this city, the same is due, not to any intentional act of the commissioners, but entirely to the great difficulty attending the determination of the amount of personal property held by the various persons assessed.

Subsequent to May 1st transcripts of the corrected record are made in large books (see Exhibit CC, annexed hereto), and
37 with the real-estate books are transmitted to the aldermen as the rolls of the year.

The valuation of the stock of the Importers' and Traders' National Bank was arrived at in the same way as was that of the Broadway Bank, described in Exhibit A A.

The valuation was sworn to by the president of said bank as the valuation of the Broadway Bank stock was sworn to by the respondent. The real estate of said Importers' and Traders' Bank was valued at $14.30 a share, being nearly twice the value per share of the real estate of the Broadway Bank.

The respondent is misinformed as to the non-appearance of his name on the assessment-rolls, as will more fully appear by the said rolls, a transcript of the material parts of which is hereto annexed, marked Exhibit CC, the description and explanations to which said exhibit are correct.

THOS. B. ASTEN.

Sworn to before me this 1st day of September, 1882.

—— ——.

38 EXHIBIT A A.

1881.

The Annual Records of Assessed Valuation of Personal Estate, 3d Ward, National Broadway Bank.

The value of the shares of this bank did not on the 10th day of January exceed (including real estate) fifty-two $\frac{51}{100}$ dollars each.

F. A. PALMER, *President.*

Sworn to before me this 12th day of April, 1881.

JNO. N. HAYWARD,
Com'r of Taxes and Assessments.

Recapitulation.

Whole number of shares	40,000	
Par value of each share	$25	
Capital	One million dollars.	
Bank real estate and its location (237 Broadway)		$297,000
Interest in clearing-house		3,000
Total		$300,000

Correct, R. 45.

(Pencil mem. facing 1st page:)
1881.

(Pencil mem. facing 1st page:)
1881.

39	Gross rate	57 50	
	R. E. (if same as 1880)	7 50	
	Net rate	50 00	
	(In blue pencil:)		52 50
			7 50
			$45

Washington, $56.
243%, Oct. 9th. Muller.

(Here ends pencil mem.)

Name of shareholder.	Residence.	No. of shares.	Assessed valuation.	Corrected valuation.	Remarks.
Avery, Elizabeth	Troy, N. Y.	100	5,000	4,500	
Brush, Henry M.	Bergen P't, N. J.	48	2,400	2,160	S. O.
Darling, Wm. A.	N. Y.	700	35,000	31,500	10,000
Franklin & Emp. Ins. Co.	N. Y.	346	17,300	15,570	On pers.
Palmer, P. A.	N. Y.	5,530	275,150	247,635	190,635
Recapitulation		40,000	2,000,000	1,800,000	1,576,035
			1,560,465		
Sworn off		$223,965			
Trans. to pers.		15,570			
			239,535		
			$1,800,000		

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Elisha J. Cadwell, one of the deputy tax commissioners of the city of New York, do depose and say that the foregoing annual record of the assessed valuations of personal estate is a true and
40 detailed statement for the year 1881 of all the taxable personal property of the shareholders, in the form of shares, of the National Broadway Bank, in the Third ward of the city of New York, whose names are therein mentioned.

ELISHA J. CADWELL.

Sworn to before me this the 8th day of Jan., 1881.

C. DONOHUE, *J. S. C.*

Explanations.

1. The affidavit of F. A. Palmer was incomplete as to quantity and verification until sworn to by him on April 12, 1881.

2. The pencil memorandum indicates the original rate at which the bank shares were assessed and the process by which that rate was determined, the words "243%, Oct. 9th, Muller," indicating that an actual sale of the stock was made at that price, on that day, by Muller, auctioneer; the words "Washington, $56," indicating that from the quarterly report of said bank, filed at Washington as required by law, it appeared that its capital and net profits aggregated a sum which divided by 40,000, the number of shares, would give a quotient of $56.

3. Whenever, during the period that the books were open for correction, any one appeared and reduced his ass't by reason of debts the same was indicated as shown in the line "Darling" in the table. When such person's debts exceeded his valuation the fact was indicated as shown in the line "Brush" in the table. When by
41 reason of residence in the same ward with the bank the assessment was transferred to and included with the general personal assessment of the individual, that fact was indicated as shown in line "Franklin, &c.," in the table.

T. B. A.

EXHIBIT B B.

STATE OF NEW YORK, }
City of New York, } ss:

I, F. A. Palmer, the owner of 5,503 shares of the National Broadway Bank, assessed at the value of $247,635, do hereby swear that the debts due by me on the 10th of January last amounted to $57,000, exclusive of the portion of such debts which has been taken into account in the adjustment of any other assessment for personal property before the commissioners of taxes and assessments for this year.

F. A. PALMER.

Sworn to before me this 12th day of April, 1881.

J. N. HAYWARD,
Commissioner of Taxes and Assessments. 190,635.

42 EXHIBIT C C.

The assessment-rolls of personal estate for the year 1881 are contained in 7 books, as follows:

The first two books contain the residents from A to Z, as follows:

Index.	Personal estate assessed to—	Business.	Place of business.	Residence of principal agency.	Valuation.	Tax.
1	Adriatic Fire Ins. Co.	------	----------	187 Broadway----	$1,520	$39 80
*	* *	*	*	*	*	*
1052	Batten, A Nelson -	Flour	12 Bridge St.-	42 E. Twelfth St.-	5,000	131 00
*	* *	*	*	*	*	*
1680	Palmer, Francis A.	Pres.	237 Broadway-	280 Madison Ave.-	10,000	262 00

At the end of each book is the following certificate:

DEPARTMENT OF TAXES AND ASSESSMENTS.

We hereby certify that the foregoing assessment-roll of the personal estate liable to taxation of the residents of the city and county of New York is correct and in accordance with the entries in the book of annual record of personal estate for the year one thousand eight hundred and eighty-one.

New York, June 28, 1881.

THOMAS B. ASTEN,
JOHN N. HAYWARD,
GEORGE B. VANDERPOEL,
Commissioners of Taxes and Assessments.

The next book contains the names of non-residents from A to Z, as follows:

*	*	*	*	*	*	*
1017	Gales, Joseph ----	Guns-	84 Chambers---	New Jersey ---	$2,000	$52 40

43 At the end of this book there is appended a certificate as above, except that for the words "the residents" the words "the non-residents" are substituted.

The next four books contain the names of the various bank shareholders (except those whose names already appear in the resident books as residents of the same ward as that in which the principal office of the bank is located), as follows:

Index.	Name of shareholder.	Residence.	No. of shares.	Name of bank.	Value per share.	Valuation.	Tax.
1	Adams, Geo.	Stockbridge, Mass.	55	Am. Ex. N. B'k	96	5,280	138 33
*	*	*	*	*	*	*	*
20926	Palmer, F. A.	N.Y.S. off to	------	Nat'l B'w'y B'k	1,906 35	------	4,994 63

At the end of each of these books there is appended a certificate as above, except that for the words "personal estate liable to taxation of the residents of" the words "of the shareholders of banks in" are substituted.

NOTE.—The column headed tax is not filled up when these books are transmitted to the board of aldermen, but is filled up when they fixed the rate of taxation for the year.

These books, together with the real-estate tax books, constitute the assessment-rolls for the year.

T. B. A.

44 *Warrant No.* 4. *Schedule No.* 785. *Line No. Bank* 20926.

Common Pleas Court, County of New York. In Special Term, November 17th, 1882.

Present: Hon. Chas. H. Van Brunt, justice.

In the Matter of the Application of MARTIN T. MCMAHON, Receiver of Taxes, *against* F. A. PALMER. } Order Committing in Default of Payment of Fine.

An application having been made to the court by Martin T. McMahon, receiver of taxes in the city of New York, upon petition, duly verified the 17th day of July, 1882, upon which an order was granted commanding the above-named respondent to appear before the court and show cause why he should not be punished for his misconduct in said application alleged, to wit, the neglect to pay the personal tax assessed and confirmed against him for the year 1881, as is set forth in said application and order to show cause, on file and to which reference is made as forming part of the proceedings upon which this order is predicated (and copies of which are hereto annexed);
45 and the said order to show cause having been duly served upon the respondent on the 31st day of August, 1882, as appears by the affidavit of service on file (and a copy of which is hereto annexed); and the said respondent appearing by counsel and presenting his affidavit, hereto annexed and with its exhibits made part of this proceeding; and after hearing E. Henry Lacombe, of counsel for the receiver of taxes, and William Hildreth Field, Esq., of counsel for said respondent, and upon reading and filing the affidavits of

Thomas B. Asten and Edward C. Donnelly, presented on behalf of petitioner and made a part of this proceeding—

The court now decides and adjudges that the said respondent, F. A. Palmer, has been guilty of the misconduct so as aforesaid alleged against him, to wit, the neglect by him to pay the personal tax assessed, imposed, and confirmed against him for the year 1881, and that such misconduct was calculated to and did impair, defeat, impede, and prejudice the rights or the remedies of the said applicant in the above-entitled proceedings.

It is thereupon, on motion of counsel for the said applicant, ordered that the said respondent be, and he is hereby, ordered to stand committed to the jail of the city and county of New York, there to remain, charged upon the said misconduct, until he shall have paid the amount of the said personal tax imposed upon him, to wit, the sum of $3,684.63, with lawful interest thereon, to wit, the further sum of $274.40, together with the costs of these proceedings, to wit, the further sum of $10—in the whole amounting to the sum of $3,969.03—unless the court shall see fit sooner to discharge
46 him; and it is further ordered that a warrant issue for that purpose.

A copy.

Attest: [L. S.] NATH'L JARVIS, JR., *Cl'k.*

Court of Common Pleas, City and County of New York.

MARTIN T. MCMAHON, Receiver of Taxes,
against
F. A. PALMER.

Take notice that the respondent, F. A. Palmer, appeals to the general term of this court from the order entered herein at a special term, bearing date on the 17th day of November, 1882, and from each and every part thereof.

December 2d, 1882.

F. A. PALMER.
WILLIAM HILDRETH FIELD,
Att'y for F. A. Palmer.

To George P. Andrews, corporation counsel; E. Henry Lacombe, counsel in charge; Nathaniel Jarvis, Jr., clerk of the court of common pleas.

47 New York Common Pleas.

In the Matter of the Application of MARTIN T. MCMAHON, Receiver of Taxes,
against
FRANCIS A. PALMER.

VAN BRUNT, *J.:*

This is an application under the act of 1843 to punish the said F. A. Palmer for his misconduct in neglecting and refusing to pay

a tax imposed upon his personal property, consisting of shares of stock in the National Broadway Bank, situated in the Third ward of the city of New York.

In opposition to the proceeding it is urged—

1st. That this proceeding is the first opportunity that Mr. Palmer as an individual has had to correct the assessment and taxation of his bank stock, for that all former proceedings have been directed against the National Broadway Bank as a corporation.

2d. That, there being no difference between the capital stock and personal property of a corporation and the shares held by all stockholders, such shares are not the subject of taxation, because section 5219 of the Revised Statutes of the United States, authorizing such taxation, is beyond the power of Congress, and chapter 596 of the Laws of 1880, providing for such taxation, is unconsti-
48 tutional and void for impairing the obligations of contracts.

3d. That other corporations than banks and individual citizens having Government bonds are allowed to deduct Government bonds in assessing value of capital stock or personal property, but in banks they are not allowed.

4th. There is no law for the taxation of moneyed capital in the hands of individual citizens in this State when invested in the shares of other corporations than banks, and the authority to tax moneyed capital in the shares of banks as other moneyed capital in the hands of individual citizens when invested in other corporations than banks is taxed confers no authority, since any tax upon bank shares must necessarily be at a greater rate than taxes on shares in other corporations than banks not taxed.

5th. That the assessment in question is void, because the assessors and others have failed to comply with the requirements of the local statutes regulating their proceeding.

(*a.*) The assessment of shareholders by a separate list does not comply with the statute.

(*b.*) There has been no confirmation by the board of supervisors, and the board of aldermen have no power.

6th. That there is no pretense of misconduct in this matter, unless the desire to have one's rights determined by the court is misconduct, and the receiver should be forced, under all the circumstances of the case, to bring an action under the Laws of 1867, chapter 334, to have the issue tried by an action, and not upon affidavits.

7th. That the Laws of 1867, chapter 334, under which the
49 counsel to the corporation presumes to act in this matter, does not authorize him to institute any suit or proceeding, but only to assume, conduct, or control any suit or proceeding already instituted by the attorney for the collection of arrears of personal taxes.

8th. That chapter 230 of the Laws of 1843 is unconstitutional and void, for that it would deprive a person of liberty and property without due process of law and without a trial by jury.

9th. If the assessment is treated as a judicial judgment, then Mr. Palmer has had no opportunity to be heard, to produce witnesses, and to cross-examine witnesses of the assessors, and to appeal therefrom

for error; and if this proceeding under the act of 1843 is maintainable and the receiver not remitted to an action, then he has been deprived of a trial by jury.

In respect to the first proposition stated by the counsel for Mr. Palmer, namely, that this proceeding is the first opportunity that Mr. Palmer, as an individual, has had to correct the assessment and taxation of his bank stock, it is sufficient to say that the papers in this case show that on the 12th day of April, 1881, Mr. Palmer did appear before the commissioners of taxes and made application to have the assessment upon his bank stock corrected by deducting the sum of $57,000, the amount of debts due by him, exclusive of the portion of such debts which had been taken into account in the adjustment of another assessment for personal property before the commissioners of taxes and assessments for this year, and that such deduction was thereupon made from the assessed value of his
50 bank stock. It is apparent, therefore, from this significant fact, that Mr. Palmer knew that his bank stock had been assessed. He made an application for a reduction of the same, as appears by the affidavit filed with the commissioners of taxes and assessments, and, if he felt aggrieved in the valuation which was put upon his bank stock, his remedy was to have the action of the board of assessors reviewed by certiorari.

I fail to see any principle which limits the powers of Congress to impose obligations upon corporations of its creation. If in the creation of a national bank Congress provides that the shares of the stock issued by such bank may be the subject of taxation under the laws of this State, where such bank is created, I have been unable to see and my attention has not been called to any principle which would restrict Congress from making such condition precedent to the acceptance of a charter by a national bank from its hands. If national banks do not desire to accept a charter under the provisions of the national bank act they are under no obligations so to do, and if persons do not desire to be taxed upon their bank shares where the bank is located, there is no obligation upon such persons to become the owners of such undesirable property.

As to the unconstitutionality of chapter 596 of the Laws of 1880, in that it impairs the obligation of contracts, because the amount of Government bonds held by the bank are not permitted to be deducted from the assessed value of the bank stock, the point does not seem to be well taken. The law is not unconstitutional because it has been improperly applied. In the act of 1880 no limita-
51 tions are made upon the power of the assessors to make such deductions as the law requires. They are directed to deduct the value of the real estate belonging to the bank. If other deductions should have been made and they have not been made, the remedy of the party aggrieved is, as has already been suggested, to review the action of the assessors by certiorari; but such action cannot affect the validity and constitutionality of the act of the Legislature from which they claim their power.

The third objection is answered by what has been already stated.

As to the fourth proposition, the reasoning in the decision of Mr.

Justice Wallace in the case of the Albany City National Bank *v.* William J. Maher, receiver of taxes of the city of Albany, seems to be conclusive. He says:

"But I am of opinion that the complainant cannot prevail upon this theory, and that shareholders to national banks are not subjected to a discrimination or rule of assessment which does not obtain as to stockholders in other corporations, because the act for the taxation of corporations generally does not exempt individuals from assessment or taxation upon their personal property or moneyed capital invested in the shares of such corporations. This act exempts only the capital stock and personal property of such corporations and joint-stock companies from assessment of taxation. There is a wide difference, for the purposes of taxation, between the capital stock and personal property of a corporation and the shares held by the several stockholders. Capital stock and shares therein are distinct species of property—as distinct as real estate and the mort-
52 gage by which it may be incumbered. The corporation and its capital and property is one thing; the stockholders and their property in its shares quite another.

"The corporation has the legal title and right of disposition of all the corporate property, subject to the conditions of its charter. The stockholder's right is to enjoy a proportionate part of the profits or, upon dissolution of the corporation, a proportionate part of the assets after payment of debts. This is a distinct, independent interest or property, held by the stockholder like any other property that may belong to him. It is this interest which the national banking act has left subject to taxation by the States, while the States are denied the power to tax the capital stock of the banking association. It probably would not have been within the constitutional power of Congress to permit the States to tax the capital stock of the banks; but no one doubts the authority of Congress to permit the States to tax the shares of the stockholders; and because property of shareholders in shares and the property of the corporation in its capital are distinct property interests, both may be taxed. (Van Allen *v.* The Assessors, 3 Wall., 573; The Delaware R. R. Tax, 18 Wall., 206; Farrington *v.* Tennessee, 95 U. S., 679.) As both may be taxed, both may be exempted from taxation by legislative authority, but one is not exempted by the exemption of the other.

"This construction of the exemption clause is consistent not only with the language used, but is consonant with the general scheme of the act, as evinced by its several provisions. The first section, which prescribes the method by which the basis of the assess-
53 ment shall be furnished by officers of corporations, enjoins the duty upon the officers of corporations liable to be taxed upon their capital stock. In the third section of the act, prescribing the rate of the tax, the tax is assessed upon the capital stock of the corporation. There is nothing in the act to indicate that any other subject of taxation than capital stock of corporations was within the contemplation of the Legislature. The exemption must not be construed to extend to a different subject, and to a distinct species of property."

The distinction which Mr. Justice Wallace points out between the property of the corporation and the property of the individual seems to have been recognized by the courts, and that such distinction exists in fact is apparent when the different rights and obligations of the corporation and the shareholders are considered, as stated by Mr. Justice Wallace.

The corporation owns certain property. The corporation, as such, has the disposition and management of such property. The stockholder, as such, has no control of such disposition or management except such as he may incidentally have by reason of his power to vote at an election for the directors or trustees of such corporations. The stockholder's interest is to enjoy a proportionate share of the profits of the business of the corporation. Over his shares the stockholder has absolute control. He may sell, mortgage, give away, or dispose of in any manner all his right, title, and interest to those shares and his right to share in the profits of the business of the corporation, provided it is done in the manner prescribed by the charter and by-laws of the corporation. These shares, therefore, seem to be distinct and independent properties, held by the shareholder like any other property, such as bonds and mortgages, or bonds without mortgages, or promissory notes, and are therefore as distinct from the property of the corporation as a bond and mortgage is from the real estate by which it may be encumbered.

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As to the fifth objection, an examination of the laws relating to taxes and assessments in the city of New York will, it seems to me, show that there has been a substantial compliance with the requirements of such laws. The Revised Statutes provide that the board of assessors shall prepare an assessment-roll, in which they shall set down in four colums and according to the best information in their power—

1. In the first column the names of all the taxable inhabitants in the town or ward, as the case may be.

2. In the second column the quantity of land to be taxed to each person.

3. In the third column the full value of such land according to the definition of the term "land" as given in the first title of this chapter.

4. In the fourth column the full value of all the taxable personal property owned by such person after deducting the just debts owing by him.

These provisions contemplated the taxation of the property of the inhabitants of cities by wards, and that a separate list or roll of such taxable property be made for each ward. Of course, a citizen or inhabitant of a city may own property in several wards, but cannot reside in but one. His personal property would be taxed in the ward in which he resided in connection with the real estate which such inhabitant owned in said ward. The real estate of the inhabitant situated in a ward different from that in which he resided would be taxed in such ward, but the roll for such ward could contain no assessment for personal taxes, as such inhab-

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itant would be assessed upon his personal property in the ward in which he resided. That such was the interpretation put upon the Revised Statutes by the Legislature is evidenced by the language used in section 1 of article 2 of chapter 230 of the Laws of 1843, which provides that the board of supervisors of the city and county of New York shall cause the corrected assessment-roll of each ward of the said city, or a fair copy thereof, to be delivered to the receiver of taxes in said city. A separate assessment-roll for each ward is evidently contemplated in the language of this section.

The provisions of the Revised Statutes in regard to the assessment of personal property of inhabitants of the city of New York, directing that personal property should be assessed in connection with the real property situated in the ward where such inhabitant resided, have been changed by section 5 of chapter 410 of the Laws of 1867, which provides that the assessed valuation of all personal property (referring to the personal property taxable in the city and county of New York) shall be entered by such commissioners in books or rolls in alphabetical order, with the names of the persons and corporations subject to taxation. This provision contemplates, in respect to the lists of taxes upon personal property in said city, the using of several books or rolls, and provides that the as-
56 sessed valuations of such personal property shall be kept in books or rolls distinct from that relating to real estate, and that the names of the persons and corporations who are taxed or assessed upon personal property shall be entered in said books in alphabetical order. Section 3 of chapter 596 of the Laws of 1880 provides that the stockholders in every bank, banking association, or trust company organized under the authority of this State or of the United States shall be taxed on the value of their shares of stock therein, and said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, city, town, or ward where such bank, banking association, or trust company is located, and not elsewhere, and whether the stockholder reside in said place, city, town, or ward or not; but in the assessment of said shares each stockholder shall be allowed all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this State, and the assessment or taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State. This provision requires that the shares of stockholders in a bank must be assessed in the ward in which the bank is situated, and not elsewhere, and clearly contemplates that assessments of bank stocks shall be by wards, and that such assessments can be included in the valuation of the personal property of such stockholders only in the cases of residence of the shareholder where the system of taxing personal as well as real is by wards, and not, as in the city of New York, where the re-
57 quirements of the statute are that personal property shall be assessed separately from real estate. It is this requirement of this statute, as has already been said, which Mr. Justice Wallace, in the case above mentioned, held not to have been com-

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57 assessed separately from real estate. It is this requirement of this statute, as has already been said, which Mr. Justice Wallace, in the case above mentioned, held not to have been com-

plied with. The provision in regard to taxation of personal property by wards not applying to the city of New York, the decision of Mr. Justice Wallace has no application to the case under consideration.

The statute of 1880 requires that the taxation of bank shares shall be made in the ward where such bank is located, and as in the city of New York personal property is not assessed by wards, but the personal property of the inhabitants of such city is assessed in books of personal estate containing the names alphabetically arranged, it is therefore necessary that separate books by wards should be kept relating to the taxation of the shares of stockholders in banks, as in no other way could the provision of the statute of 1880 be complied with.

The papers in this case seem to show that such has been substantially the practice of the board of assessors in reference to bank stocks in the city of New York. In these books are entered the names of banks, the wards in which they were situated, the names of the stockholders, their residence, their number of shares, the assessed value, and corrected value. These books, therefore, contain a complete record by wards of the assessed valuation put upon the shares of each individual stockholder in each of the banks situated within the ward, and is a complete assessment-roll within the requirements of the statute relating to the assessment of personal property in the city of New York. It would appear, therefore, that the entry of the assessed valuation of the shares of bank stock owned by Mr. Palmer
58 was made in the manner which substantially complied with the provisions of the statute. The papers disclose that he certainly was not misled by the manner in which the same was entered, because he applied and had deducted his personal indebtedness from the amount of the assessed value of bank stock.

The objection that there had been no confirmation by the board of supervisors and that the board of aldermen have no power does not appear to be supported by any provision of the constitution. The Legislature have the power to say by whom and how the assessment-lists in the city and county of New York shall be confirmed, and when they provide, as they do by section 3 of chapter 304 of the Laws of 1824, that the board of aldermen of the city of New York shall exercise and perform those duties which have heretofore been conferred upon the board of supervisors of the said city and county, all the powers exercised and possessed by the board of supervisors of the said city and county which are not expressly provided in the constitution to be exercised by a board of supervisors become vested in the board of aldermen as such; and this provision of the statute had precisely the same effect as though the Legislature had enacted that thereafter the tax-lists in the city and county of New York should be confirmed by the board of aldermen of said city and county, instead of, as heretofore, by the board of supervisors of said city and county.

As to the sixth objection, it is sufficient to say that the act of 1843, chapter 230, contemplates that the refusal and neglect of a party

upon whom a tax has been imposed makes him guilty of a
59 misconduct in refusing to pay such tax when he has the property wherewith to make such payment.

As to the seventh objection, it would appear that the counsel for the respondent misapprehends the language of section 12 of chapter 334 of the Laws of 1867. He assumes that the power of the corporation counsel to intervene in proceedings for the collection of personal taxes relates only to proceedings already instituted, and does not give him the right to act as counsel for the receiver of taxes in the institution and conduct of such proceeding.

Prior to the provisions appointing the attorney for the collection of arrears of personal taxes the receiver of taxes does not seem to have been restricted in the employment of counsel for the carrying on of the proceedings to collect personal taxes which it was his duty to institute. By chapter 334 of the Laws of 1867 the appointment of an attorney for the collection of arrears of personal taxes was provided for, and it was also provided that the receiver of taxes should send to such attorney monthly the cases of personal taxes embraced in the assessment-rolls in the city of New York, where the assessment is $1,000 or more, &c., and that said attorney should be charged with the prosecution of all suits and proceedings in any court of jurisdiction for the collection of all cases of personal tax in said city sent to him by such receiver of taxes under the provisions of that act. The act then provides that the counsel for the corporation of the city of New York, whenever he may deem it essential to the public interest, shall assume, conduct, and control any suit or proceeding contemplated under the provisions of this act, and employ
60 counsel in cases connected with the assessment and collection of taxes. It seems to me evident that the language of this section authorizes the counsel to the corporation to intervene at any time and under any circumstances where it deems it essential and control and conduct all proceedings. If he shall control, conduct, and assume all proceedings, it certainly means that he shall have the power to institute such proceedings upon behalf of the receiver of taxes. He having determined that it was proper that any proceeding should be instituted, the corporation counsel has the power to conduct it and control it, and the initiation of the proceedings seems to form a very important part of such conduct and control.

The objection that chapter 230 of the Laws of 1843 is unconstitutional, because it deprives a person of his liberty without a trial by jury, is clearly not well taken. It is not within the provision of any article of the Constitution of the United States or of the State of New York. The provision of the Constitution of the United States is that no person shall be deprived of life, liberty, or property without due process of law. As to whether a part of such due process of law consists of trial by jury or not is a question which is not legislated upon in the Constitution. It is entirely silent upon that point. The provisions of the constitution of the State of New York in reference to this subject are precisely the same. No mention of trial by jury is made in that connection. A previous section provides that a trial by jury in all cases in which it has been heretofore used

shall remain inviolate forever, but no suggestion is made that at the time of the adoption of that Constitution the trial by jury of the rights of a party who has failed to pay his taxes then existed by any statute law or constitution.

61 As to the ninth objection, it seems to be sufficient to say that Mr. Palmer has had his opportunity to be heard, and he presented such evidence and such claim as he thought proper, and there is no pretense that he made any attempt to cross-examine any witnesses or to produce any witnesses upon his own behalf, and he is not deprived of any right of appeal, because he had the right to review the proceedings of the assessors by certiorari.

I am of the opinion, therefore, that the tax upon the bank shares of Mr. Palmer was levied according to law, and that he should be punished by a fine for his misconduct in not paying said tax in an amount sufficient for the payment of the tax assessed and of the costs and expenses of these proceedings.

William Hildreth Field, of counsel for F. A. Palmer.

E. Henry Lacombe, of counsel to the corporation, for the receiver of taxes.

62 At a general term of the court of common pleas for the city and county of New York, held at the court-house, in the city of New York, on the 13th day of March, 1884.

Present: Hon. Joseph F. Daly, P. J.
" Miles Beach, } JJ.
" George M. Van Hoesen, }

In the Matter of the Application of MARTIN T. MCMAHON, as receiver of taxes in the city of New York, to enforce the payment of the tax imposed for personal property upon Francis A. Palmer.

The above-named respondent, Francis A. Palmer, having appealed to the general term of this court from the order entered in this proceeding at a special term, bearing date on the 17th day of November, 1882, and from each and every part of the said order, and the said appeal having come duly on to be argued, now, after hearing Mr. William Hildreth Field, of counsel for the respondent, in support of the said appeal, and Mr. E. Henry Lacombe, assistant to the counsel to the corporation, for the said receiver of taxes, in opposition thereto, and after due deliberation had thereon, on motion of George P. Andrews, counsel to the corporation, it is—

63 Ordered, That the said order appealed from as aforesaid be, and the same is hereby, in all things affirmed, with costs to the petitioner.

Court of Common Pleas for the City and County of New York.

In the Matter of the Application of MARTIN T. MCMAHON, receiver of taxes in the city of New York, to enforce the payment of the tax imposed for personal property upon Francis A. Palmer.

SIRS: Please take notice that the respondent in the above-entitled proceeding, Francis A. Palmer, appeals to the court of appeals from the order of the general term of the above-named court in this proceeding, entered on the 24th day of April, 1884, affirming an order of the special term entered in said proceeding and dated the 17th day of November, 1882.

Dated N. Y., June 5, 1884.

Yours, &c., WILLIAM HILDRETH FIELD,
Att'y for App'l't.

To E. Henry Lacombe, Esq., counsel to the corporation; Nathaniel Jarvis, Jr., Esq., clerk of the court.

64 STATE OF NEW YORK, } ss:
City and County of New York, }

I, Nathaniel Jarvis, Jr., clerk of the court of common pleas for the city and county of New York, do hereby certify that I have compared the foregoing copy order of this court, the papers upon which said order was founded, and the notice of appeal therefrom each with the original thereof on file in my office, and that each is a correct transcript of the original with which it was so compared and of the whole of said original.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court this 25th day of July, 1884.

[L. S.] NATH'L JARVIS, JR., *Clerk.*

Court of Common Pleas. General Term, November, 1883.

In the Matter of the Application of MARTIN T. MCMAHON, Receiver of Taxes, Respondent,
against
FRANCIS A. PALMER, Appellant.

Wm. Hildreth Field, counsel for appellant; E. Henry Lacombe, counsel for respondent.

BEACH, *J.:*

65 The objection that this proceeding is the first opportunity appellant has had to correct the assessment and taxation of his bank stock is answered satisfactorily by the learned justice in the court below.

The fact of his having appeared and obtained a reduction is conclusive.

The personal examination to be made by the deputy tax commissioner relates to real property and not to personal estate (Laws of

1859, chapter 302). With respect to the latter, they are required to furnish such information in detail as may be called for by the commissioners. There can be no personal examination by the officials in the absence of any power to coerce its exhibition, or even interrogate the owner.

The oath to the annual record here involved was made by the deputy tax commissioner on the 8th day of January, 1881. There is no reason, the record being complete, why it should have been postponed to the 10th day of January. The record must be ready for public examination and correction on and after the second Monday (the 10th) of January, but may be completed in any of its parts and verified before as well as on that date. In Westfall *v.* Preston, 49th N. Y. R., 349, the premature verification was of the assessment-roll before the time for its correction had expired. This made the affidavit a nullity, and there was no completed assessment-roll whereon to base the tax.

The shareholders' list for assessment of tax, being in a separate book, does not render the assessment void (Foster *v.* Van Wyck, 2d Abb. Ct. of Ap. Decisions, 167).

The different method under the statute of preparing the
66 rolls for the taxation of personal estate in this city from the one applicable to the rest of the State is explained by the learned justice who presided at special term, and shows the necessity for an additional ward-roll to assess bank shares to comply with the law requiring this class of property to be taxed in the ward where the bank is located (Laws 1880, chap. 596, sec. 3).

The objection that there should have been a reduction in the assessment of the proportionate part representing the investment of capital by the bank in Government bonds was considered and overruled in Van Allen *v.* The Anenus, 3d Wallace, 573, and The People *v.* The Commissioners, 4th Wallace, 244.

It is difficult to cite illustrations from the different kinds of personal property indicating the distinction between corporate shares and corporate capital. Nevertheless, the difference is apparent to the mental vision. The shares are held, bought, and sold at pleasure. Their value is decreased or lessened by factors not directly affecting the capital. If the corporation pays dividends, the stock appreciates; if not, it declines.

Share value depends upon the successful or unsuccessful use of capital and business management. Were there no difference between stock and capital the valuation of the former would depend solely upon the increase or decrease of the former. The value of any successful business may be far in excess of the capital invested, and the holder of corporate stock shares possesses more than the right to a proportionate part of the corporate capital—*i. e.*, his quota of profit.

Shares of corporations other than banks not being taxed is
67 no infringement of the restriction limiting the taxation of this property at no greater rate than is assessed upon moneyed capital in the hands of individual citizens. It is not exemption of other corporate shares which is repugnant to the text of this pro-

vision, but unjust discrimination against bank shares compared with other moneyed capital subject to taxation.

In The People *v.* Commissioners, *supra*, the court say: "The answer is that, upon a true construction of this clause of the act, the meaning and intent of the law-makers were that the rate of taxation of the shares should be the same or not greater than upon the moneyed capital of the individual citizen which is subject or liable to taxation—that is, no greater proportion or percentage of tax in the valuation of the shares should be levied than upon other moneyed taxable capital in the hands of the citizens."

The other positions taken by the appellant have either been satisfactorily answered in the court below or have not appeared to me in sufficient doubt to need extended consideration.

The order should be affirmed, with costs and disbursements.

68 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 13th day of April, in the year of our Lord one thousand eight hundred and eighty-six, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur April 14th, 1886.

69 In the Matter of the Application of MARTIN T. MCMAHON, receiver, &c., to enforce payment of the tax imposed, &c., upon F. A. Palmer.

Be it remembered that on the 30th day of July, in the year of our Lord one thousand eight hundred and eighty-four, Francis A. Palmer, the appellant in this action, came here into the court of appeals, by William Hildreth Field, his attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the court of common pleas for the city & county of New York; and Martin T. McMahon, receiver of taxes, &c., of the city of New York, the respondent in said action, afterwards appeared in said court of appeals, by E. Henry Lacombe, counsel to the corporation.

70 Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals having heard this cause argued by Mr. William Hildreth Field, of counsel for the appellant, and by Mr. D. J. Deane, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the general term of the court of common pleas for the city & county of New York be, and the same hereby is, affirmed, with costs.

And it was also further ordered that the record aforesaid and the

proceedings in this court be remitted to the said court of common pleas *court*, there to be proceeded upon according to law.

71 Wherefore it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon as well as the notice of appeal and return thereto aforesaid as the order of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the court of common pleas for the city & county of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said court of common pleas before the justices thereof, &c.

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *April 14th*, 1886.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals,
[L. S.] with the papers originally filed therein attached thereto.

E. O. PERRIN, *Clerk.*

72 At a special term of the court of common pleas for the city & county of New York, at chambers thereof, in the city hall, in the city of New York, on the 6th day of May, 1886.

Present: Hon. Henry Wilder Allen, judge.

In the Matter of the Application of MARTIN T. McMAHON, as receiver of taxes in the city of New York, to enforce the payment of the tax imposed upon personal property of Francis A. Palmer.

Francis A. Palmer, above named, having appealed to the court of appeals from the order of the general term of this court, dated the 13th day of March, 1884, and duly entered herein on the 24th day of April, 1884, and the said court of appeals having in all things affirmed the said order, with costs:

Now, on reading and filing the remittitur from the said court of appeals, and on motion of E. Henry Lacombe, counsel to the
73 corporation of the city of New York, it is ordered that the judgment of the court of appeals be, and the same hereby is, made the judgment of this court.

A copy.

NATH'L JARVIS, JR., *Cl'k.*

74 Court of Common Pleas for the City & County of New York.

In the Matter of the Application of MARTIN T. McMAHON, as receiver of taxes in the city of New York, to enforce the payment of the tax imposed upon personal property of Francis A. Palmer.

Francis A. Palmer, above named, having appealed to the court of appeals from the order of general term of this court, dated the 13th

day of March, 1884, and duly entered on the 24th day of April, 1884, and the said appeal having come on to be heard, and after hearing William Hildreth Field, on behalf of the appellant, Francis A. Palmer, in support of said appeal, and E. Henry Lacombe, counsel to the corporation, on behalf of the respondent, the receiver of taxes of the city of New York, in opposition thereto; and the said court of appeals having in all things affirmed the order of the general term herein, with costs; and the said judgment of the court of appeals having been made the judgment of this court, and the costs of the respondent having been duly adjusted, on notice, at the sum of $303.50:

75 Now, on motion of E. Henry Lacombe, counsel to the corporation, it is adjudged that the judgment of the court of appeals be, and the same hereby is, made the judgment of this court.

And it is further adjudged that Martin T. McMahon, receiver of taxes, recover of the said Francis A. Palmer the sum of $303.50 as and for his costs and disbursements, and that he have execution therefor.

May 12th, 1886.

NATH'L JARVIS, JR., *Clerk.*

76 Supreme Court of the United States.

In the Matter of the Application of MARTIN T. MCMAHON, Receiver of Taxes, *against* FRANCIS A. PALMER.

Know all men by these presents that we, Francis A. Palmer, of the city, county, and State of New York; Francis P. Furnald, of the same place, and George Shepherd, of the same place, are held and firmly bound unto Martin T. McMahon, receiver of taxes of the city of New York, in the sum of ten thousand dollars, to be paid to the said Martin T. McMahon, receiver of taxes, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals. Dated this 23d day of June, 1886.

Whereas the above-named Francis A. Palmer hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment entered in the above-entitled action by the court of common pleas for the city and county of New York:

Now, therefore, the condition of this obligation is such that
77 if the above-named Francis A. Palmer shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

FRANCIS A. PALMER. [L. S.]
FRANCIS P. FURNALD. [L. S.]
GEORGE SHEPHERD. [L. S.]

Sealed and delivered in presence of—
WILLIAM HILDRETH FIELD.

STATE OF NEW YORK, } ss:
City and County of New York, }

Francis P. Furnald, being duly sworn, says that he is a resident and freeholder within the State of New York, and worth double the sum specified in the above bond over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

FRANCIS P. FURNALD.

Subscribed and sworn to before me this 23d day of June, 1886.
[SEAL.] JAMES F. DOYLE,
Notary Public, New York County.

STATE OF NEW YORK, } ss:
City and County of New York, }

George Shepherd, being duly sworn, says that he is a resi-
78 dent and freeholder within the State of New York, and worth double the sum specified in the above bond over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

GEORGE SHEPHERD.

Subscribed and sworn to before me this 23d day of June, 1886,
[SEAL.] JAMES F. DOYLE,
Notary Public, New York County.

STATE OF NEW YORK, } ss:
City and County of New York, }

On this twenty-third day of June, A. D. 1886, before me personally appeared the above-named Francis A. Palmer, Francis P. Furnald, and George Shepherd, all personally known to me and to me known to be the same persons described in and who executed the above bond, and they severally duly acknowledged to me that they executed the same for the uses and purposes therein mentioned.
[SEAL.] JAMES F. DOYLE,
Notary Public, New York County.

The foregoing bond is approved as to form and amount and sufficiency of sureties and as a supersedeas and stay of execution.
June 24, 1886.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

79 [Endorsed:] Copy. U. S. Supreme Court. In the matter of the application of Martin T. McMahon, rec'v'r of taxes, against Francis A. Palmer. Bond. G. E. P. Howard and William Hildreth Field, att'ys for F. A. Palmer.

80 UNITED STATES OF AMERICA, *ss:*

To Martin T. McMahon, receiver of taxes of the city of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, 1886, pursuant to a writ of error filed in the clerk's office of the court of common pleas for the city and county of New York in the matter of the application of Martin T. McMahon, receiver of taxes of the city of New York, against Francis A. Palmer, wherein said Francis A. Palmer is plaintiff in error and you are defendant in error, to show cause why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Blatchford, an associate justice of the said Supreme Court of the United States, this twenty-fourth day of June, 1886.

SAM'L BLATCHFORD.

81 STATE OF NEW YORK, }
City and County of New York, } *ss:*

William Hildreth Field, being duly sworn, doth depose and say that he is over the age of twenty-one years; that on the 29th day of June, A. D. 1886, at the U. S. marshal's office, in the post-office building, in the city of New York, he served the foregoing citation upon Martin T. McMahon, receiver of taxes, etc., by delivering a copy of the same to him personally and leaving the same with him, and that he knew the person so served to be the same person described in said citation as Martin T. McMahon, and at the same time exhibited to him this original citation.

WILLIAM HILDRETH FIELD.

Subscribed and sworn to before me this 29th day of June, 1886.

ABRAM BROWN, JR.,
Notary Public, New York County.

{ Seal of John A. Shields, United States Commissioner, Southern District of N. Y. }

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

81½ U. S. Supreme Court.

82 [Endorsed:] U. S. Supreme Court. In the matter of the application of Martin T. McMahon, receiver of taxes, against Francis A. Palmer. Citation. G. E. P. Howard and William Hildreth Field, att'ys, &c., of F. A. Palmer, 237 Broadway, New York city. Filed June 28, 1886. N. Jarvis, Jr. June 28, 1886. N. Jarvis, Jr., clerk.

83 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the judges of the court of common pleas for the city and county of New York, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court of common pleas for the city and county of New York, before you or some of you, pursuant to the mandate or remittitur of the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had, in the matter of the application of Martin T. McMahon, receiver of taxes, against Francis A. Palmer, wherein was drawn in question the validity of several of the statutes of the State of New York and the authority exercised under them on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of their validity, and wherein a title, right, privilege, or immunity was claimed under the Constitution or a statute of
84 the United States and the decision was against the title, right, privilege, or immunity specially set up under such Constitution or statute, a manifest error hath happened, to the great damage of the said Francis A. Palmer, as is said and as appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of
85 the Supreme Court of the United States, this twenty-third day of June, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States of America.

The foregoing writ of error is allowed.
June 24th, 1886.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

The answer of the judges of the court of common pleas for the city and county of New York to the within writ is contained in the

schedule hereto annexed, containing the record and proceedings in the within-mentioned action, as in the writ of error commanded.

86 In witness whereof the seal of the said court of common pleas is hereto affixed this first day of October, A. D. 1886.

[Seal Common Pleas of New York.]

NATH'L JARVIS, JR.,
Clerk of the Court of Common Pleas for the City and County of New York.

87 [Endorsed:] U. S. Supreme Court. In the matter of the application of Martin T. McMahon, receiver of taxes, against Francis A. Palmer. Writ of error. G. E. P. Howard and William Hildreth Field, att'ys & of counsel for F. A. Palmer, 237 Broadway, New York city. Filed 28th June, 1886. N. Jarvis, Jr., clerk.

88 Court of Appeals.

In the Matter of the Application of MARTIN T. McMAHON, Receiver of Taxes, Respondent,
vs.
FRANCIS A. PALMER, Appellant.
} April 13, 1886.

Wm. H. Field, for appellant; D. J. Dean, for respondent.

RUGER, *Ch. J.:*

Upon an application by the receiver of taxes of New York to the court of common pleas of that county the appellant was adjudged guilty of misconduct in refusing to pay the tax assessed upon his personal property for the year 1881, and a fine was imposed upon him therefor. The proceeding was had under provisions of chapter 230, Laws of 1843, and was conducted in conformity therewith. The tax in question was predicated upon the customary annual assessment of property liable to taxation under the general laws of

89 the State, but was in this instance based upon an assessment of the value of national bank shares owned by the appellant. The number of shares so owned by the defendant and the estimated value thereof was furnished by him to the assessment officers, and upon the information thus obtained, with that derived from other sources, said shares were appraised at their actual value and placed in the assessment lists provided for the enrollment of property of that description. Certain irregularities are alleged to have occurred in the proceedings for the assessment of the property which, it is claimed, were jurisdictional in character and ought to render such assessment invalid and the tax levied thereon void.

It is quite true if any act which was required by law to be performed by the assessment officers, and which is made thereby the condition of a valid assessment, has been omitted by them it will render the assessment void. We have been unable, however, to find any such irregularity in the proceedings. Those claimed to exist are the following:

That the deputy tax commissioners failed to comply with section 7 of chapter 302 of the Laws of 1859, which required them personally to examine "each and every house, building lot, pier, or other assessable property," and furnish, under oath, to the commissioners of taxes and assessments a detailed statement of such property, with the name of the owner or occupant, "with such other information in detail relative to personal property" as said commissioners may from time to time require. This provision very obviously refers only to real property, except in the clause expressly referring to personal property, and there is no claim that that requirement has been omitted. This view of the statute was assumed by this court in Brevoort *vs.* City of Brooklyn, 89 N. Y., 128, and seems to be required by the plain inapplicability of the provision to assessments of personal property.

90 It is also claimed that the oath required to be made to the statement directed to be returned by the deputy to the commissioners of taxes and assessments was improperly made, in that it was sworn to on the 8th instead of the 2d Monday of January, being the 10th. There is no provision requiring such oath to be made on any particular day, and the whole object and intent of the statute in respect thereto is complied with provided it be taken after the examination of the property is made by the deputy commissioners and before the statement is filed with the commissioners, on the second Monday of January thereafter.

It is also claimed that the entry of the assessments for national bank shares upon a list or book separate from other assessments for personal property against individuals in the city renders such assessment void. It is provided by section 3, chapter 596, Laws of 1880, that such "shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, city, town, or ward where such bank, banking association, or trust company is located, and not elsewhere, whether the stockholder resides in said place, city, town, or ward or not." Sections 4 and 5, chap. 410, of the Laws of 1867 provide for the assessment of personal property in the city of New York upon separate rolls from that of real estate. In the general laws of the State the personal property of an individual is required to be assessed against him in the place of his residence, and assessments of real estate follow the location of such property.

It must follow, as the necessary consequence of these requirements, when the individual assessed does not live in the same ward in which the bank is located in which he owns shares, and does not own real estate therein, that his assessment for bank shares must be made upon lists especially prepared for that purpose in the ward where it is located, or the property must altogether escape

91 assessment and taxation. The familiar rule that a statute must be so construed as to give it effect and to avoid a result which would render it inoperative, if it be reasonably susceptible of such an interpretation, would seem to require us to sanction the only mode of assessment which seems capable of securing the benefits designed by the statute.

It is also clear that the tax-payer has not been deprived of any substantial benefit by the mode thus pursued. The statute gives information to him of the place where the roll is to be deposited for examination, and the length of time during which it is to be there kept for inspection, and of his opportunity during such time to apply to the proper officers for the correction of any errors which he may find in his assessment. Not only this, but the commissioners of taxes and assessment are also required to advertise the fact of the completion of the annual record containing all assessments upon property in the city of New York, and the time when the same shall be ready for inspection by tax-payers, and to keep the same in the tax commissioners' office, open for that purpose from the 2d Monday in January to the 30th day of April thereafter. There is no complaint but that these requirements were complied with or but that the appellant had actual notice of the assessment in question in ample time to procure its correction if any error existed therein. In fact, it affirmatively appears that the relator did appear before the commissioners of taxes on the 12th day of April, 1881, and made affidavit, upon which he procured a substantial reduction of the assessment in question. (Matter of De Peyster, 80 N. Y., 565; matter of Louden, 89 N. Y., 548.)

It does not appear that there is any provision of law requiring the assessments of individuals for bank shares in New York to be made otherwise than in the mode adopted in this case, and in the
92 absence of such provisions we do not see why the practice here pursued was not in harmony with the general regulations applicable to the subject and did not afford to the appellant the same opportunity and notice of the assessment in question that was given to all other tax-payers of similar assessments in New York.

There is nothing in section 5219 of the Revised Statutes of the United States which either impliedly or expressly condemns the mode of registering the assessment adopted in this case. That section provides that nothing contained in that act shall prevent the shares owned by an individual in a national bank from being included in the valuation of his personal property in assessing taxes imposed by the authority of the State in which the bank is located. The mere ministerial act of the officers in estimating and noting the result of the judicial determination as to the liability of the individual and the value and assessability of his personal property—provided such act does not produce an inequality of assessment—are not affected by the provisions of the section. The section purports only to affect the judicial act of the assessor in including the value of bank shares in the assessments of property and not to regulate its exercise, except in respect to the rate of taxation and assessment adopted. The provisions pertaining to the assessment of bank shares in New York are essentially different from those considered by Judge Wallace in Albany City Bank *vs.* Maher, 19 Blatchford, 175. The views there expressed are inapplicable to the modes of assessment prescribed in the city of New York, and apply only to cases where the assessment of both real and personal

property are required by statute to be made on the same book or roll. The views we have expressed are sustained by the decisions of this court. Foster *vs.* Van Wyck, 2 Abb. Ct. App. Decis., 167, and also by Williams *vs.* Weaver, 75 N. Y., 30, which, in this respect, was unaffected by the subsequent proceedings in that case.

93 There are no other objections affecting the regularity of the proceedings for assessment which are of sufficient importance to merit notice.

It is further objected by the appellant that "the system of taxing the appellant's national bank shares resulted in taxing the moneyed capital invested in them at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this State invested in other investments." The particular ground upon which the appellant bases this point is the claim that "there is no law upon our statute books for the taxing of shares of stock of railway companies, street railways, ferry and canal companies, fire and life insurance, trading and other miscellaneous companies, and the deposits in savings banks." This claim seems to be unfounded in fact. A careful examination of the statutes and a comparison of the burdens laid upon the property, capital, and business of the people under the laws of the State will show that the money invested in national banks is subjected to no greater burden than that imposed upon other species of assessable property. Capital invested in national banks is taxable only upon the individuals owning shares therein, and for the purpose of such taxation is assessable, like all other personal property liable to taxation in the State, at its actual value. Such shares were originally made assessable by chapter 761 of the Session Laws of 1866, under the authority of *of* the act of Congress, sec. 5219, which expressly permitted such assessments, subject only to the restrictions "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," and that the shares of such stock owned by a non-resident of the State shall be taxed in the city or town where the bank is located, and not elsewhere. The act of 1866 was amended by chapter 596 of the Laws of 1880, and chapter 477 of the Laws of 1881, so as to authorize the

94 allowance to a tax-payer upon bank shares of all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of the State. The only result of this legislation has been to bring the capital invested in national banks within the taxing power of the State and place it on terms of equality with reference to general taxation with all other assessable property therein. The general laws of the State require all property, both real and personal, no matter by whom owned, except in certain cases of special exemption, to be assessed for purposes of taxation; this requirement embracing all property owned by individuals as well as corporations, and including all shares of stock held by individuals in corporations, except in cases where the capital stock of such corporations is itself liable to taxation as against the corporation. (Secs. 1, 2, 3, 4, 5, 6, 7, pp. 981 and 982, R. S., 7 ed.; sec. 1, p. 1036, R. S., 7 ed.)

By special provision of law all assessments upon capital employed in banking corporations, whether national or State, are required to be made in the same manner and to have in view the placing of these institutions on terms of absolute equality (chap. 140, Laws of 1880). The various railroad, ferry, canal, manufacturing, and other industrial corporations referred to by the appellant are not only liable to taxation either upon their capital stock or upon their shares held by individuals, which are substantially the equivalents of each other, but are also subject to contributions from their gross receipts, taxes from franchises, and other impositions from which bank capital is altogether exempt (chap. 456, Laws of 1857; chaps. 534 and 542, Laws of 1880; chap. 477, Laws of 1881; sec. 7, p. 982, R. S., 7th ed.). Our system of laws, with reference to the taxation of incorporated companies and capital invested therein, has been carefully framed with a view of reaching all taxable property
95 and subjecting it to equality of burden, so far as that object is attainable in a matter so complex. In view of the wide variation in the employable value of such investments and the frequent mutations of their condition, it is by no means certain that their object has not been attained with reasonable accuracy. It is quite clear, from even this cursory view of the statutes, that if any discrimination is made by our laws in taxing capital invested it is not to the prejudice of that employed in banking corporations.

Even if this were not the result of the statute, we are of the opinion that investments in the shares of the companies named does not come within the meaning of that clause in the Federal statute referring to other moneyed capital in the hands of individuals. That phrase, as generally employed, distinguishes such capital from other personal property and investments in the various manufacturing and industrial enterprises of citizens, and this is the sense in which it is used in our tax laws, as appears by reference to the statutes (secs. 3, 4, p. 982, R. S., 7th ed.; chap. 195, Laws of 1845; chap. 456, Laws of 1857; chap. 240, Laws of 1863; sec. 1, p. 1036, R. S., 7th ed.; chap. 542, Laws of 1880, and the laws amendatory thereof). Such is also believed to be the meaning attached to such words as generally used in the Federal statute. The obvious intent of the Federal statute was to prevent discrimination against investments in national bank shares and put them upon terms of equality as to taxation with similar institutions and investments in the several States, and the language of the statute seems to have been selected with reference to that object. The rule of comparison is not with the rate of taxation imposed upon personal property generally or with specific investments in mining, manufacturing, or the various other industrial corporations organized throughout the State, but with other "moneyed capital" in the hands of individual citizens.
These are words of limitation as well as of description,
96 and are to be defined according to the meaning which has been generally given to them.

It was said in Evansville Bank *vs.* Britton, 105 U. S., 324, that "the act of Congress does not make the tax on personal property the measure of the tax on bank shares in the State, but the tax on

moneyed capital in the hands of the individual citizen. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital." In Providence Institution for Savings *vs.* Boston, 101 Mass., 583, it is said "that this clause was obviously intended to preclude the possibility that property of that description should be singled out for special and peculiar taxation. Its operation would be to prevent oppressive and hostile discriminations unfavorable to the banks." It might well seem reasonable to Congress to take some precaution that the banks in each State should be taxed only at the same rate and generally in the same manner as the moneyed capital of individual citizens in the same State. It was claimed in Hepburn *vs.* The School Directors, 23 Wall., 481, that the words "moneyed capital," as used in the act, signified only money put out at interest; but the court there held that such a construction was too narrow, and that the phrase included stock in banks, and perhaps other stocks and securities. The court in that case further held that the exemption of some moneyed capital from assessment did not necessarily invalidate a statute authorizing an assessment upon national bank shares, saying that "it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt."

We are therefore of the opinion, even if it could be shown that there were some corporations or some personal property that was subject to a less rate of taxation than that of capital employed
97 in banking corporations, it would not vitiate the law imposing taxes upon shares in banks, unless it appeared to be the clear intent of the Legislature thereby to effect discrimination against them.

It is further claimed "that the proceedings under chapter 230 of the Laws of 1843 would deprive the appellant of his property and liberty without due process of law. There is no foundation for this claim.

The proceedings by which taxes for governmental purposes have been assessed, levied, and collected from the citizen have always been regarded as administrative and not judical in their character, and to constitute due process of law within the meaning of the Constitution. Such proceedings have from necessity been exercised by governments during all times by summary methods of procedure, and to require the deliberation and delay incidental to judicial proceedings in the exercise and enforcement of the taxing power by government would seriously cripple its efficiency if not destroy its existence. These methods were in exercise and existence long before the adoption of the Constitution, and have never been supposed to be affected thereby. In the matter of the N. Y. P. E. Public School, 31 N. Y., 584, Judge Denio says that "in executing the taxing power the Legislature provides such agencies and safeguards against surprise, mistake, or injustice as it thought expedient. It is manifestly proper that the tax-payers should have notice of the imposition proposed to be laid upon them, and an opportunity for making suggestions

and explanations to the proper administrative board or officers, and this is generally secured in all well-considered systems of taxation; but it is for the Legislature to determine and prescribe, in every case, what shall be sufficient, and there is not, that I am aware of, any constitutional provision bearing on the subject."

Judge Porter, in Rockwell *vs.* Nearing, 35 N. Y., 308, says:
98 "There are many examples of summary proceedings which are recognized as due process of law at the date of the Constitution, and to these the prohibition has no application." The Supreme Court of the United States, in Murray's Lessee *vs.* Hoboken Land and Improvement Co., 18 How., U. S., 272, stated "That probably there are few governments which do or can permit their claims for public taxes, either on the citizen or the officers employed for their collection or disbursement, to become subjects of judicial controversy according to the course of the law of the land. Imperative necessity have formed a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding and sometimes by systems of fines and penalties, but always in some way observed and yielded to." (See also McMillen *vs.* Anderson, 95 U. S., 37; Harris *vs.* Wood, 6 Munroe, 642; Weimer *vs.* Bunbury, 30 Mich., 201.)

As we have seen, the appellant had full notice of the proceedings for the imposition of the tax in question and an opportunity to question their correctness by proceedings to review the action of the assessing officers if he had felt aggrieved thereby; but, having omitted to exercise that right, he is now estopped from raising any question affecting the regularity of the proceedings, as the exercise of the judicial powers conferred upon the assessors in making the assessment in question.

We have thought it unnecessary to discuss other answers to the points raised and other questions presented on the briefs of counsel, as they are either embraced in what has been already said or are too plain to require serious notice.

The order should be affirmed.

"All concur except Rapallo, J., absent."

(A copy.)

H. E. SICKELS, *Reporter.*

(L. 3179.)

Endorsed on cover: New York city and county court of common pleas. No. 145. Francis A. Palmer, plaintiff in error, *vs.* Martin T. McMahon, receiver of taxes of the city of New York. Filed October 11, 1886.

SUPREME COURT OF THE UNITED STATES.

FRANCIS A. PALMER,

Plaintiff in Error,

against

MARTIN T. McMAHON, as Receiver of Taxes of the City of New York,

Defendant in Error.

STATEMENT OF FACTS AND POINTS FOR PLAINTIFF IN ERROR.

WM. HILDRETH FIELD,

For Plaintiff in Error.

WILLIAM H. CLARK,

Corporation Counsel,

For Defendant in Error.

C. G. Burgoyne's Printing Business, Cor. Walker and Centre Sts., N. Y.

Supreme Court of the United States.

FRANCIS A. PALMER,
Plaintiff in Error,

AGAINST

MARTIN T. McMAHON, as Receiver of Taxes of the City of New York,
Defendant in Error.

Statement of Facts.

This is a writ of error to review an appeal from an order in a special proceeding under Chapter 230 of the Laws of 1843, committing F. A. Palmer to the jail of the City and County of New York, there to remain charged upon the misconduct of neglecting to pay alleged personal taxes until he shall have paid said personal taxes (fols. 44, 45, 62, 72).

Francis A. Palmer is the president of and a stockholder in the National Broadway Bank, and has been such ever since the 10th day of January, 1865, when the Broadway Bank, organized under the Laws of the State of New York, became the National Broadway Bank, organized under the Laws of the United States (fol. 23).

From the 1st day of May to the 1st day of November, 1880, he was a resident of the Town of Stamford, in the State of Connecticut; from the 1st day of November, 1880, to the 1st day of May, 1881, he was a resident of the Twenty-first Ward, in the City of New York, and

from the 1st day of May, 1881, to the 1st day of November, 1881, he was a resident of the Town of Stamford, in the State of Connecticut, and for the balance of the year was a resident of the Twenty-first Ward, in the City of New York (fol. 9).

During the year 1881, and for some time prior thereto, the National Broadway Bank was located and doing business in the Third Ward of the City of New York (fol. 9).

On the first Monday of September, 1880, Francis A. Palmer owned 5,543 shares of the capital stock of the said bank; on the first day of January, 1881, he owned 5,503 shares, having sold 40 shares on the 7th of September, 1880, and on the second Monday of January, 1881, he owned 5,463 shares, having sold another 40 shares thereof on the 4th of January, 1881 (fol. 9).

Prior to the second Monday of January, 1881, the Commissioners of Taxes and Assessments sent a book to the National Broadway Bank, and requested the bank to fill in a list of its stockholders, which the bank refused to do, but offered to allow the Clerk of the Commissioners to inspect and copy their list of stockholders, and thereupon the Clerk of the Commissioners was allowed to inspect and copy their list of stockholders (fols. 32, 33).

This book was used as an exhibit upon the argument at Special Term, and Exhibit AA (fols. 38, 39, 40) is an exhibit substituted in place thereof.

This book, entitled "National Broadway Bank," commenced with a printed statement that it is the "Annual Record of Assessed Valuation of Personal Estate, Third Ward, National Broadway Bank;" the oath of Mr. F. A. Palmer, president, made on the 12th day of April, 1881, as to the value of its shares, with a recapitulation of all the shares and real estate of the National Broadway Bank, and some calculations as to gross and net rate, in ink and lead pencil, afterwards a list of stockholders and afterwards the following affidavit:

STATE OF NEW YORK, }
City and County of New York, } ss. :

I, ELISHA J. CADWELL, one of the Deputy Tax Commissioners of the City of New York, do depose and say that the foregoing annual record of the assessed valuation of personal estate is a true and detailed statement for the year 1881 of all the taxable personal property of the shareholders in the form of shares of the National Broadway Bank in the Third Ward of the City of New York, whose names are therein mentioned.

ELISHA J. CADWELL.

Sworn to before me this the 8th }
day of January, 1881. }

C. DONOHUE,
J. S. C.

(Fol. 40.)

The second Monday of January, 1881, fell on the 10th day of January, 1881.

Before April 30th, 1881, F. A. Palmer received notice in the words and figures following (fol. 11):

" MR. FRANCIS A. PALMER,
" No. 237 Broadway,
" N. Y. City.

" DEPARTMENT OF TAXES AND ASSESSMENTS,
" City Hall Park, 32 Chambers street.

" NEW YORK, January 10th, 1881.

" You are hereby notified that your personal estate
" for 1881 is assessed at $10,000, and the same, if
" erroneous, must be corrected before the Commis-
" ioners on or before the 30th day of April next, or it

" will be confirmed at that amount, from which there " will be no appeal.

" By order of the Board,

" ALBERT STORER,

" Secretary."

In the month of April, 1881, Francis A. Palmer called upon the Commissioners and demanded that the amount of the capital stock of the National Broadway Bank invested in Government bonds should be deducted from the assessed valuation of the capital stock of the National Broadway Bank, and made other demands hereinafter mentioned, and offered to make any affidavit the Commissioners might require, at which time the Commisioners offered to allow F. A. Palmer to make an affidavit as to the value of the shares of stock in the said bank, and as to any indebtedness he might have, and to that extent they would receive his affidavits, and thereupon the Commissioners prepared the following affidavits and he made them (fol. 11).

Exhibit AA.—1881.

The Annual Records of Assessed Valuation of Personal Estate, 3d Ward.

NATIONAL BROADWAY BANK.

The valuation of the shares of this bank did not, on the 10th day of January, exceed (including real estate) fifty-two $\frac{51}{100}$ dollars each.

F. A. PALMER,
President.

Sworn to before me this 12th day of April, 1881.

JOHN N. HAYWARD,
Com. of Taxes and Assessments.

Fol. 38.

STATE OF NEW YORK,
City and County of New York, } ss. :

I, F. A. PALMER, the owner of 5,503 shares of the National Broadway Bank, assessed at the value of $247,635, do hereby swear that the debts due by me on the 10th day of January last amounted to $57,000, exclusive of the portion of such debts which has been taken into account in the adjustment of any other assessment for personal property before the Commissioner of Taxes and Assessments for this year.

F. A. PALMER.

Sworn to before me this 12th day of April, 1881.

J. N. HAYWARD,
Comr. of Taxes and Assessments.

Fol. 41.

The Commissioners made a mistake as to the number of shares, and should have filled in the printed form 5,463 instead of 5,503, a difference of forty shares and of $1,800 valuation.

Thereafter, on the 26th day of April, 1881, formal demand, verified by the oath of Francis A. Palmer, was served upon the Commissioners, in the words and figures as follows:

To Hons. Thomas B. Asten, John N. Hayward and George B. Vanderpoel, Commissioners of Taxes and Assessments of the City and County of New York:

(A) Demand is hereby made upon you by the National Broadway Bank, located in the City of New York, in the Third Ward, on behalf of the said bank, and also on behalf of all shareholders of said bank, whose names appear as shareholders therein upon the 10th day of January, 1881, upon the list of shareholders of said bank in your possession, or upon any books

in your office, claimed by you to be part of "The Annual Record of the Assessed Valuation of Real and Personal Estate for the Year 1881;" that you strike the names of all shareholders of said bank from the "Annual Record of Assessed Valuation of Personal Estate, Third Ward, National Broadway Bank," and from the "Annual Record of the Aesessed Valuation of Real and Personal Estate for the Year 1881," in your office, as any one of said shareholders thereon appears to be assessed by reason of his ownership of stock in said bank; and that you also strke therefrom the assessed value of the stock of said bank owned by each of said shareholders respectively, on the said 10th day of January, 1881, as the same appears upon the said books in your office; and if the name of any one of said shareholders has been placed upon the "Annual Record of Assessed Valuation of Real and Personal Estate" in your office, for the year 1881, in consequence of an assessment by reason of the ownership both of shares in said bank and of other personal property, that you reduce the assessment of every one of such shareholders to the assessed value of such other personal property, by deducting from his assessment of personal property the assessed value of the stock in said bank owned by him on the 10th day of January, 1881. You are respectfully referred to the said list of shareholers in your possession, which is hereby made a part of this application.

This demand is made upon the following grounds, among others:

FIRST. That the shares in the said bank owned by each of said shareholders on the 10th day of January, 1881, have not been included in the valuation of personal property of the owner or holder of such shares, in assessing such property by authority of the State of New York.

SECOND. That the Legislature of the State of New York has not determined and directed the manner and place of taxing all the shares of the National Banking Association located within the State, in accordance with the provisions of Section 5219 of the Revised Statutes of the United States.

THIRD. That the shares in said bank owned by each of said shareholders on the 10th day of January, 1881, have been assessed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this State.

FOURTH. That no one of the said shareholders of the said bank was liable on the 10th day of January, 1881, or at any time subsequent thereto has been liable to be assessed for taxation by authority of the State of New York by reason of his ownership of stock in said bank.

FIFTH. That no one of the said shareholders in said bank has been assessed for the year 1881, by reason of his ownership of stock in said bank, in the manner or within the time prescribed by law.

SIXTH. That the assessessment of each of the shareholders of said bank, with respect to the shares of stock owned by such shareholders on the tenth day of January, 1881, and the entry of the name of each of such shareholders, and of the assessed value of his share in said books or so-called "Annual Records," were erroneous, illegal, void and without jurisdiction.

(B) In the event that you refuse the foregoing application and demand marked A, demand is hereby made by said bank as aforesaid upon you to reduce the assessed value of each share of the capital stock of this bank to ten dollars.

This demand is made upon the following grounds:

The assessed value of each share of stock of this bank has been fixed by you at forty-five dollars, exclusive of the real estate owned by the bank, and the entire assessed value, as fixed by you, of the shares of stock of this bank, exclusive of real estate, is one million eight hundred thousand dollars.

On the tenth day of January, 1881, one million four hundred thousand dollars of the capital and surplus of this bank were invested in stocks, bonds, treasury notes or other obligations of the United States, exempt from all taxation, and on the said tenth day of January, 1881, the shares of stock of this bank then represented an ownership by the said shareholders in said obligations of the United States to the said amount of one million four hundred thousand dollars.

(C) In the event that you refuse the foregoing demand and application marked B, demand is hereby made by said bank, as aforesaid, upon you, that you reduce the assessed value of each share of stock of this bank, to the amount of twenty-seven dollars, being sixty per cent. of the assessed value of each share of stock, exclusive of real estate, as fixed by you.

This demand is made upon the following grounds:

The said shares of stock have been unequally assessed, and illegally and erroneously overvalued, for the reason that large amounts of personal property, other than bank shares, have been overlooked and not discovered for the purpose of assessment, and not assessed by the Deputy Tax Commissioners or by yourselves, for the year 1881, and no proper or adequate means of discovering the existence and value of such personal property, and of assessing it, have been employed by the said Deputy Tax Commissioners, or by yourselves, whereas such personal property might have been discovered and assessed by diligent inquiry on the part of said Deputy Tax Commissioners and of yourselves; and also for the reason that real property in the City of New York has been generally assessed

for the year 1881 at not more than sixty per cent. of the sum for which such property, in the judgment of the Deputy Tax Commissioners of the City of New York, under ordinary circumstances would sell.

Dated New York, April 25th, 1881.

FRANCIS A. PALMER. [L. S.]
President.

FRANCIS A. PALMER,
On his own behalf and behalf of others.

CITY AND COUNTY OF NEW YORK, ss.:

FRANCIS A. PALMER, being duly sworn, deposes and says that he resides at No. 180 Madison avenue, in the City of New York, and is president of the National Broadway Bank of the City of New York; that he knows the corporate seal of said bank, and that the seal affixed to the foregoing application is the corporate seal of the said bank, and that the same is affixed thereto by its authority, and that he signed his name thereto by like authority.

That the facts stated in the foregoing application, with respect to the amount of the capital and surplus of said bank invested on the 10th day of January, 1881, in stocks, bonds, treasury notes or other obligations of the United States, are true, to deponent's knowledge.

FRANCIS A. PALMER.

Sworn to before me this 26th day of April, 1881.

WILLIAM HILDRETH FIELD,
Notary Public.

(Fols. 17 to 22).

Prior to November 1st, 1881, Francis A. Palmer sent to the office of the Receiver of Taxes for his tax bills and received no other bill for tax on personal estate except one against him individually (fol. 22).

	Valuation.
To tax on personal estate	$10,000

of which he had received notice (fol. 11), and which was paid (fol. 12).

Thereafter, in the early part of 1882 Francis A. Palmer received a similar bill against the National Broadway Bank (fol. 12).

	Valuation.
To tax on capital stock	$1,560,465

of which he had received no notice, and for which payment was demanded (fol. 12).

Thereafter, in the early part of 1882, F. A. Palmer was informed by a Marshal that he held a warrant against him for the collection of a tax on his personal estate for $4,994.63, which was the first notice of said tax he ever received, and the first notice of the pursuit of individual stockholders in the place of the bank as a corporation (fol. 12).

On the 10th day of January, 1865, the National Broadway Bank was organized under the Laws of the United States. The capital stock was one million of dollars, and of which F. A. Palmer was the owner of 4,000 shares. In order to secure circulation said Palmer purchased for the bank one million of the bonds issued by the United States under the Act of June 30, 1864, commonly known as 5–20 bonds, and which declared "all bonds, Treasury notes and other obligations of the United States shall be exempt from taxation by or under State or municipal authority," and deposited the same with the United States Treasury to secure circulation (fol. 13).

As those bonds were called in, said Palmer purchased from time to time other bonds issued by the United States under the Act of July 14, 1870, commonly known as the 5s of 1881, 4½s of 1891 and 4s of 1907, and which act declared "all of which said several classes of bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States, as well as taxation in any form by or under State, municipal or local authority, and the said bonds shall have set forth and expressed upon their face the above specified condition," and substituted the same from time to time in the place of others with the U. S. Treasury to secure circulation. So that on the 10th day of January, 1881, the entire capital stock of the National Broadway Bank, being one million dollars at its par value, was invested in bonds issued under the Act of July 14, 1870, which expressed upon their face the said specified condition of exemption from all taxation. That 5,463 shares of the capital stock of the National Broadway Bank at their par value, $25, all invested in United States bonds as aforesaid, amounts to $136,575 without any estimate of the premium thereon, which being deducted from $190,-635, the assessed value for taxation, less $57,000 of debts, leaves the sum of $54,060, upon which the tax of 2.62 per cent. amounts to about $1,400, or, if the premium at that time upon the bonds be taken into account, and being also deducted, would leave a sum much less than $54,060, upon which the tax would amount to much less than $1,400 (fols. 36, 37, 38, 39, 40).

The individual citizens of this State have always been allowed to deduct their Government bonds in assessing the value of their taxable personal property, and although the assessment upon bank stock is at a greater rate than is made upon investments in real estate or any other enterprise, and although the National Broadway Bank stock is valued higher

in proportion than some other bank stock, notably the stock of the Importers' and Traders' National Bank, which is valued at $115 only upon a par value of $100, while the National Broadway Bank stock is valued at $180 upon a par value of $100, being rated at $45 on a par value of $25, and which stock of the Importers' and Traders' National Bank has a larger market value and a larger value upon its books than the shares of the capital stock in the National Broadway Bank, and although there were many technical grounds to the payment of the same, yet the said Francis A. Palmer, believing it was more than was due upon the merits of the claim, sent to the Receiver of Taxes his check in the words and figures following (fols. 13, 14):

No. 1913. NEW YORK, May 9, 1882.

NATIONAL BROADWAY BANK.

Pay to the order of Martin T. McMahon, Receiver of Taxes, fourteen hundred dollars.

$1,400 in current funds.

Fol. 43. F. A. PALMER.

And the same was paid, and supposed to be satisfactory to the authorities, under the circumstances of the case, until the petition and order to show cause in the above-entitled matter was served upon him.

Shares in the capital stock of this bank are assessed at their full market value while real estate is assessed at about sixty per centum of its value, and personal estate, with the exception of bank stock, is assessed at a much less rate. Individual citizens engaged in the business of private banking are always allowed to deduct their bonds of the United States in assessing the value of their personal property, as well as all other individual citizens, save only the stockholders in banks. Coporations owning bank stock are not taxed with

the other stockholders, but are taxed as a corporation and allowed to deduct their bonds of the United States in assessing the value of their capital stock (fol. 15).

The 5,463 shares of the National Broadway Bank belonging to the said Palmer on the 10th of January, 1881, were not allowed all the deductions and exemptions allowed by law, for that in assessing the value of other taxable personal property owned by other individual citizens of this State, such individual citizens were allowed to deduct their Government bonds and have the same exempted, whereas said Palmer was not allowed to deduct that part of his personal property or bank shares which was invested in Government bonds or to receive exemption for the same (fol. 16).

The said 5,463 shares of the National Broadway Bank were assessed and taxed at a greater rate than is made or assessed upon other moneyed capital in hands of individual citizens of this State, for that said Palmer and other stockholders of bank shares had other moneyed capital invested in fire insurance companies, railroad corporations, gas companies, and other corporations, assessed and taxed under Chap. 542 Laws of 1880, at a very moderate rate upon their par value, and by Section 8 of that act were exempted from all other asessment or taxation, so that the assessment and taxation of said Palmer's personal property or bank shares at their full value, nearly double their par value, works an assessment and taxation at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State, even if the rate remained the same as to both classes of personal property ; whereas the rate upon the moneyed capital invested in other corporations than national banks, by the very terms of Chap. 542, Laws of 1880, is at a much less rate (fol. 16).

The said Francis A. Palmer has no debts, credits, choses in action, or other personal property not taxed elsewhere in the State of New York, or not taxed anywhere, but is a taxpayer upon all his property, real and personal, and only claims the deductions and exemptions to which he is justly entitled (fol. 17).

The facts which have a more direct bearing upon each particular point will be set forth in the discussion of the several points.

Pending this appeal and without waiting for the determination of the question as to whether this proceeding under Chapter 230 of the Laws of 1843 would deprive the plaintiff in error of his property and liberty without due process of law, and deprive him of the equal protection of the same, in 1887 a regular action at law was commenced in the Superior Court of the City of New York by George W. McLean, as Receiver of Taxes in the City of New York against the plaintiff in error to recover the tax of 1881 upon his shares of stock in the National Broadway Bank, less the sum of $1,310 paid on account thereof, leaving still due $3,684.63, the identical tax and amount to recover which this summary proceeding was instituted. That action is at issue and pending.

POINTS.

I. THE SYSTEM OF TAXING THE APPELLANTS' NATIONAL BANK SHARES RESULTED IN TAXING THE MONEYED CAPITAL INVESTED IN THEM AT A GREATER RATE THAN IS ASSESSED UPON OTHER MONEYED CAPITAL IN THE HANDS OF INDIVIDUAL CITIZENS OF THIS STATE INVESTED IN OTHER INVESTMENTS, AND WAS BEYOND THE AUTHORITY OF THIS STATE AND THE JURISDICTION OF THE TAX COMMISSIONERS.

"Nothing herein (the National Banking Act) shall prevent all the shares in any association from being in-

cluded in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which such association is located, but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to two restrictions—that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or county where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county or municipal taxes to the same extent, according to its value as other property is taxed."

§ 5219, Revised Statutes of the United States.

"As Congress was conferring a power on the States which they would not otherwise have had to tax these shares, it undertook to interpose a restriction on the exercise of that power, manifestly designed to prevent taxation which should discriminate against that class of property as compared with other moneyed capital. In permitting the States to tax these shares, it was foreseen that the States might be disposed to tax the capital invested in these banks oppressively. This might have been prevented by fixing a limit in the amount. But Congress, with due regard to the dignity of the States, and with a desire to interfere only so far as was necessary to protect the banks from anything beyond their equal share of the public burdens, said: You may tax the real estate of the banks as other real estate is taxed, and you may tax the shares of the banks as the personal property of the owner to the same extent you tax other moneyed capital invested in

your State, It was conceived that by this qualification of the power of taxation equality would be secured and injustice prevented."

People vs. Weaver, 100 U. S. Reports, 543.

Where a very *material part* of other moneyed capital in the hands of individual citizens is *exempted* from taxation, capital invested in national bank shares was intended by Congress to be placed upon the same footing of substantial equality in respect to taxation by State authority as the State established for other moneyed capital in the hands of individual citizens, and should also be exempted.

Boyer vs. Boyer, 113 U. S. Reports, 689.

This decision rendered in March, 1885, is directly contrary to the General Term decision in this case in November, 1883 (fol. 199).

There is no law upon our statute book for the taxing of *shares* of stock of railway companies, street railway, ferry and canal companies, fire and life insurance, trading and other miscellaneous companies, and the deposits in savings banks, and these investments are a very material part of the moneyed capital in the hands of individual citizens.

There is no taxation of *shares* other than bank shares.

Further, by the Act of 1880, Chap. 552, of the Laws of New York, passed June 9th of that year, the City of New York was authorized to issue certain bonds and stocks of the said city exempt from taxation, and the City of New York, as is well known, have issued millions of bonds and stock pursuant to that act "exempt from taxation."

Any tax upon bank shares must necessarily be at a greater rate than no tax upon shares in other corporations.

"Unequal exactions in every form or under any pretence are absolutely forbidden, and, of course, unequal

taxation, for it is in that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws when arbitrary and unequal taxation is permissible; when different persons may be taxed on their property of the same kind similarly situated at different rates."

County of San Mateo vs. Southern Pacific R. R., 8 Am. & Eng. Railroad Cases, p. 1.

In a recent case in New Jersey, decided at the February Term, 1886, The Central Railroad Company of New Jersey against The State Board of Assessors, it was held:

1. A separate independent property tax cannot, under the Constitution of this State, be put on property arbitrarily selected for the purpose and set apart from other property of the same kind.

2. The Constitutional Amendment that requires that "property shall be assessed for taxes under general laws and by uniform rules," prohibits the selection simply at the legislative will of the property of two classes of corporations, separating it from the mass of similar property, and imposing an exclusive tax on the property so selected.

3. A property tax for State purposes imposed on the lands and tangible piers and property used by railroad and canal companies, and on their franchises, such tax touching no other property, declared unconstitutional.

What is said under the Constitution of the State of New Jersey can be said under the 14th Amendment to the Constitution of the United States.

Imposing taxes for other than State purposes upon the shares of national banks must necessarily work an inequality of rate upon the individual citizens of the State, and bring the taxation within the restriction that

it shall not be "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

It appears from fols. 69, 70 and 71 of the motion papers that the taxation for the City of New York was:

For State purposes	$4,270,760
For expenses of the city government.....	27,488,445

This taxation varies in every county of the State, and the expenses other than for State purposes is less in every county in the State than it is in the County of New York.

The providing of a separate system for the taxation of certain corporations by Chap. 542 of the Laws of 1880 operates to make the system provided for taxing bank shares by Chap. 596 of 1880 obnoxious to the restrictions of Section 5219 of the Revised Statutes of the United States, by making great variation in the taxation of moneyed capital invested in banks as compared with moneyed capital invested in corporations taxed under Chap. 542 of the Laws of 1880, and at a much less rate under Chap. 542 of the Laws of 1880.

People *ex rel.* Westchester Fire Ins. Co. vs. Davenport, 91 N. Y., 574.

II. THIS PROCEEDING UNDER CHAPTER 230 OF THE LAWS OF 1843 WOULD DEPRIVE THE APPELLANT OF HIS PROPERTY AND LIBERTY WITHOUT DUE PROCESS OF LAW, AND DEPRIVE HIM OF THE EQUAL PROTECTION OF THE SAME, VIOLATING THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In the Kentucky Railroad Tax Cases, 115 U. S. Reports, 322, where the Commonwealth of Kentucky brought several actions at law against the railroad companies to recover taxes, it was decided that:

A State statute for raising public revenue by the assessment and collection of taxes, which gives notice of the proposed assessment to an owner of property to be affected by requiring him at a time named to present a statement of his property, with his estimate of its value, to a designated individual charged with the duty of receiving the statement, which fixes time and place for public sessions of other officials, at which this statement and estimate are to be considered, where the official valuation is to be made, and when and where the party interested has the right to be present and to be heard, and which affords him opportunity in a suit at law for the collection of the tax to judicially contest the validity of the proceeding, does not necessarily deprive him of his property without "due process of law," within the meaning of the Fourteenth Amendment to the Constitution of the United States.

A State law for the valuation of property and the assessment of taxes thereon, which provides for the classification of property subject to its provisions into different classes, which makes for one class one set of provisions as to modes and methods of ascertaining the value, and as to right of appeal, and different provisions for another class as to those subjects, but which provides for the impartial application of the same means and methods to all constituents of each class, so that the law shall operate *equally and uniformly* on all persons in similar circumstances, denies to no person affected by it "equal protection of the laws," within the meaning of the Fourteenth Amendment to the Constitution of the United States.

The Court say further that the Court of Appeals of Kentucky had construed the acts in question to give a right to notice and hearing which the railroads had, and a trial at law besides, and further say:

"The valuation of railroad property under that act, and the assessment of taxes thereon, are not final in the sense that they constitute a charge upon the property

subject to the tax, or a liability fixed upon the corporation owing it. That result can be attained and the tax actually collected only by suit."

In the proceeding at bar counsel to the corporation claim that the assessment is as final as a judgment, and we cannot contest the validity of the assessment, although :

This proceeding is the first opportunity that Francis A. Palmer has had individually to correct the assessment and taxation of his own shares of bank stock, for that all former proceedings as to shares of bank stock had been directed against the National Broadway Bank, as a corporation of which he was president.

Prior to this proceeding Mr. Palmer received notice that his personal estate was assessed at $10,000 ; the bill was obtained and paid (fols. 11, 12).

Mr. Palmer made the affidavit of April 12th, 1881 (fol. 41), as president, as to the value of the shares, and while it is true he also made the affidavit of his personal indebtedness at the same time, he had the right to suppose that the procedure in the future would be as it had been in the past, against the bank as a corporation instead of against the individual shareholder, for all previous attempts to induce Commissioners to treat with shareholders as individuals had always failed. No deductions or exemptions to bank shareholders had ever been allowed until the decision of People vs. Weaver, 100 U. S. Reports, 539, allowing deductions for debts.

Further, Mr. Palmer was only allowed to make an affidavit as to the value of the shares of the stock in the said bank and as to any indebtedness he might have (fol. 11).

No pretense of any notice sent to Mr. Palmer that his shares of bank stock had been assessed on his individual account. The bill which was rendered for the tax was against the bank (fol. 12).

"And by due process of law is meant one which following the forms of law is appropriate to the case. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be obtained; and it must give to the party to be affected an opportunity of being heard respecting the justice of the judgment sought. Without these conditions entering into the proceeding, it would be anything but due process. If it touched life or liberty it would be wanton punishment. If it touched property it would be arbitrary exaction."

County of San Mateo vs. Southern Pacific R. R., 8 Am. and Eng. Railroad Cases, p. 1.

In Stuart vs. Palmer, 74 N. Y., 183, the meaning of due process of law is elaborately considered by this Court with reference to numerous adjudications, and Mr. Justice EARL says, in the case of an assessment which was set aside: "The law must require notice to them, and give them a hearing and an opportunity to be heard."

Under the circumstances of this case we submit we have had no notice, no right to a hearing, no opportunity to be heard individually.

A demand was made (fols. 17 to 22), but no attention was paid to it.

Neither before the Commissioners nor in this proceeding have we had any opportunity to confront or cross-examine plaintiff's witnesses, nor to subpœna witnesses in our own behalf to secure preponderating testimony upon conflicts in evidence.

But in this action pending in the Superior Court of the City of New York for the balance claimed to be due on account of this identical tax of 1881 upon our shares of stock in the National Broadway Bank we will have all opportunities.

III. THE PROCEEDING BY *certiorari* IS NOT THE ONLY WAY TO REVIEW THE ACTION OF TAX ASSESSORS AND TAX RECEIVERS, WHEN THE LIBERTY AND PROPERTY OF THE CITIZEN IS INVOLVED, MORE ESPECIALLY AS TO JURISDICTIONAL DEFECTS.

1. The oath of the Deputy Tax Commissioner, appended to the book containing the assessment of the shares of the National Broadway Bank, failing to comply with the provision of the statute relative to the form of oath to assessments is, a jurisdictional defect and fatal to the validity of the assessments.

Brevoort vs. City of Brooklyn, 89 N. Y., 129.
Westfall vs. Preston, 49 N. Y., 349.
Bellinger vs. Gray, 51 N. Y., 610.
Bradley vs. Ward, 58 N. Y., 401.
People vs. Suffern, 68 N. Y., 321.
Hinkley vs. Cooper, 22 Hun, 253.
Merritt vs. Village of Portchester, 71 N. Y., 309.
Schreiber vs. Kuchler, 49 Wis., 301.
Merrill vs. Taylor, 6 Neb., 236.

By the Laws of 1859, Chap. 302, entitled "An Act in Relation to Taxes and Assessments in the City of New York and to Amend the Several Acts in Relation thereto," passed April 14, 1859, it was provided:

Sec. 7. It shall be the duty of the Deputy Tax Commissioners, under the direction of the Commissioners of Taxes and Assessments, to assess all the taxable property in the several districts that may be assigned to them for that purpose by said Commissioners, and shall furnish to them under oath a detailed statement of such property: that said deputies have personally examined each and every house, building, lot, pier, or other assessable property, giving the street and ward, map number of such real estate embraced within such districts, together with the name of the owner or occupant, if known; also, in their judgment, the sum for which said property, under ordinary circumstances,

would sell, with such other information in detail relative to personal property or otherwise, as the said Commissioners may from time to time require. Such deputies shall commence to assess real and personal estate on the 1st Monday of September in each and every year."

The affidavit of the Deputy Commissioner (fol. 40 of the motion paper) makes no pretense to comply with the required form, neither could a Deputy Tax Commissioner be found who would be willing to swear he had ever made any personal examination as to personal property.

The omission of " Have together personally examined within the year past each and every lot and parcel of land, house, building or other assessable property within the ward " was held fatal in

Brevoort vs. City of Brooklyn, 89 N. Y., 128.

The omission of any proof of any examination, or even attempt to find personal property should be held fatal where only $150,000,000 personal property other than bank shares was found in the City of New York against $58,000,000 bank shares (fol. 68).

2. The oath of the Deputy Tax Commissioner appended to the book containing the assessment of the shares of the National Broadway Bank being premature is a jurisdictional defect and fatal to the validity of the assessment.

Westfall vs. Preston, 49 N. Y., 349.

The oath was taken on the 8th of January, 1881, when it could not be taken until the second Monday, the 10th of January, 1881.

3. The shareholders of the National Broadway Bank having been assessed, if at all, upon a list separate from the books in which the assessments were made against

the owners of other personal property, the assessment is fatally defective.

The case of the Albany City Bank against Mahen, Receiver, 19 Blatchford, Circuit, 175, decided that assessing bank shares upon a list separate from the books in which the assessments were made against the owners of other personal property is fatally defective.

Then, there was no assessed valuation *duly entered* in books called "The Annual Record of Assessed Valuation of Real and Personal Estate" for the year 1881, and there was no annual record of the assessed valuation of real and personal estate for the year 1881 *kept* in the office of the Commissioners, but only a mere list of stockholders, and the annual record was not kept open for examination and correction from the second Monday of January until the 1st of May, as required by law.

Laws of 1859, Chap. 302, § 8.

4. Statutes directing assessments that fail to provide for giving notice to those assessed that they can be heard upon the question of the amount of the assessments before such assessments became final and conclusive are invalid and void for unconstitutionality.

The constitutional validity of the law is to be tested not by what has been done under it, but what may by its authority be done. The Legislature may prescribe the kind of notice and the mode in which it shall be given, but it cannot dispense with all notice.

Stuart vs. Palmer, 74 N. Y., 183, 188.

"Sec. 9. The said Commissioners previous to and during the time said books are open for inspection shall advertise the fact in the several newspapers, or in such manner as they may deem most advisable."

Laws of 1859, Chapter 302.

By this the Legislature prescribed no kind of notice,

and no mode of notice, but left it to the discretion of the Commissioners, and thereby dispensed with all notice, for the Commissioners only advertised in the "City Record" which is not a newspaper in the common acceptation of the term, but a mere bulletin of official transactions not generally for sale (fol. 5).

5. Section 5219 of the Revised Statutes of the United States and the act to revise the statutes of this State relating to banks, banking and trust companies only authorized the taxation of national bank shares for State purposes and not for the expenses of a city government.

"Section 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State."

An Act to revise the statutes of the State relating to banks, banking and trust companies (Laws of 1882, Chapter 409):

"§ 327. The taxes imposed by this act shall be paid into the treasury of the State, to be held for the objects specified; that is to say, for that general fund and the payment in every successive fiscal year of the expenses, claims and demands, which shall be a lawful charge upon that fund while such taxes shall continue to be laid."

§ 312 of this revising act is a mere re-enactment of the Laws of 1880, Chapter 596, Section 3, under which the taxes of 1881 were assessed, with the exception that "trust companies" are exempted therefrom.

The plain, simple construction of these acts would seem to be, taxes imposed by the authority of the State to be paid into the treasury of the State, and not taxes

imposed by the Board of Apportionment under the charter of the City of New York, of which only a small portion is paid into the treasury of the State.

IV. WHERE A LATER STATUTE, NOT PURPORTING TO AMEND A FORMER ONE UPON THE SAME SUBJECT, COVERS THE WHOLE SUBJECT, AND WAS PLAINLY INTENDED TO FURNISH THE WHOLE LAW THEREON, THE FORMER STATUTE WILL BE HELD TO BE REPEALED BY NECESSARY IMPLICATION, ALTHOUGH THE LATER STATUTE CONTAINS NO REPEALING CLAUSE.

Heckman vs. Pinkney, 81 N. Y., 211.

By virtue of this decision, Chapter 230 of the Laws of 1843, if permitting these proceedings to deprive parties of liberty and property without a trial upon the merits, should be declared repealed by Chapter 334 of the Laws of 1867, "An Act in relation to the collection of arrears of personal taxes in the City of New York," which covers the whole subject of the collection of personal taxes and provides for an action to be instituted by the proper authority and a trial upon the merits.

V. F. A. PALMER WAS GUILTY OF NO MISCONDUCT IN REFUSING TO PAY FINE IMPOSED FOR NON-PAYMENT OF TAXES, IMPOSED UNEQUALLY AND CONTRARY TO NATURAL JUSTICE.

In January, 1865, the National Broadway Bank was organized under the laws of the United States. The capital stock was one million of dollars. F. A. Palmer was the owner of 4,000 shares, and president. The capital of one million has always been invested in bonds issued under acts of the United States, declaring

them " exempt from all taxation by or under State or municipal authority " (fols. 13–14, *et seq.*).

Congress has passed acts modifying these acts so as to authorize the States to tax shares in the capital stock.

The fact is an aggregate mass of personal property, exempt from taxation, belonging to owners of fractional parts thereof is claimed not to be deprived of its exemption when the amount of the tax is divided between the fractional owners thereof and collected out of them.

But this dangerous power to modify has been sustained by the Courts, and the power to tax shares, a mere mode of ownership, has been sustained, but the power to tax bank shares at a greater rate than other personal property is taxed has not yet been sustained by the courts, and comes to this Court upon conflicting affidavits.

Mr. Palmer paid his taxes on personal property assessed at $10,000 (fol. 11).

Mr. Palmer paid all he ought to pay on account of his bank shares (fols. 13, 14).

Mr. Palmer claimed before the Court of Appeals that the Receiver should bring an action under the Laws of 1867, Chap. 334, where documentary evidence in the control of the City of New York could be produced and witnesses examined and cross-examined, and the disputed facts in the motion papers regularly tried, and the important questions involved be not disposed of upon conflicting affidavits, and that action has now been brought.

Even the mistake as to number of shares (fol. 9), and the amount of payment (fol. 45) will not be corrected in the proceedings.

Fine and imprisonment under the circumstances of this proceeding is a confiscation of property or deprivation of liberty contrary to public policy.

VI. The order appealed from should be reversed, and the Receiver remitted to his remedy by action (if any).

The foregoing was my VI. point in the Court of Appeals of the State of New York, and counsel now submits to the Supreme Court of the United States, that the order of the Court of Appeals of the State of New York (fols. 69, 70), should be reversed, and the Receiver left to his remedy by action.

WILLIAM HILDRETH FIELD,
Of Counsel for Appellant.

[REG. 28, FOL. 518.]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 145.

FRANCIS A. PALMER, PLAINTIFF IN ERROR,

against

MARTIN T. McMAHON, RECEIVER OF TAXES OF THE CITY OF NEW YORK, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

DAVID J. DEAN,
Counsel for Defendant in Error.

[REG. 28, FOL. 518.]

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FRANCIS A. PALMER, PLAINTIFF IN ERROR,

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MARTIN T. McMAHON, RECEIVER OF TAXES OF THE CITY OF NEW YORK, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK.

Brief of Martin T. McMahon, Receiver, etc., Defendant in Error.

Statement.

First—This is a proceeding brought under the provisions of chapter 230 of the Laws of the State of New York of 1843, article II., sections 12 and 13, page 320, to enforce payment of an unpaid personal tax laid upon the plaintiff in error, as a shareholder in the National Broadway Bank in the City of New York.

Second—The proceedings appearing by the record are as follows:

A petition, dated July 17, 1882, to the Court of Common Pleas by the defendant in error as Receiver of Taxes, in which it is shown as follows:

(1.) That, in the year 1881, F. A. Palmer, the plaintiff in error, was a resident of the Twenty-first Ward in the City of New York and a stockholder in the National Broadway Bank—a bank organized under the authority of the Laws of the United States and of the State of New York, located and doing business in the Third Ward of the said city.

(2.) That subsequent to the first Monday of September, 1880, the shares of stock in said bank, owned by said plaintiff in error, were duly assessed for the year 1881 at the valuation of $247,635, which valuation was entered by the Tax Commissioners in the books called "The annual record of the assessed valuation of real and personal estate" for the year 1881.

(3.) That said annual record was open for examination and correction from the second Monday of January, 1881, until the first of May, 1881; and that previous to and during the time the books were so open the Tax Commissioners advertised the fact in the *City Record*, such being the manner of advertisement deemed by them most advisable.

(4.) That thereafter, before April 30, 1881, Mr. Palmer applied for a reduction of the valuation, and prior to June 1, 1881, such valuation was reduced by the Commissioners to the sum of $190,635.

(5.) That on May 1, 1881, assessment rolls were prepared from said books in the manner provided by law, upon which rolls Mr. Palmer's name was entered, with an assessment against him for the shares of stock in said bank in the sum last above mentioned, and thereafter the tax rolls were certified by the Commissioners to the Board of Aldermen of the City of New York.

(6.) That immediately afterward the Tax Commissioners gave public notice that the tax rolls had been completed and delivered to the Board of Aldermen, and that the same would be open to public inspection in the office of the clerk of said Board, for a period of fifteen days from the date of said notice; which notice was published in the *City Record*, the New York *Star*, the New York *Evening Post*, newspapers published in said city, for fifteen days consecutively, beginning July 5, 1881.

(7.) That thereafter the tax upon such valuation of said shares of stock owned by Mr. Palmer was estimated and set down upon said roll at the sum of $4,994.63, and on October 13, 1881, the said tax was confirmed; and thereafter on the 24th of October, 1881, the corrected assessment rolls showing the amount of said tax was delivered to the defendant in error, as Receiver of Taxes, with a warrant directing the collection thereof.

(8.) That notice was duly published requiring payment of said tax, and the plaintiff in error has in part neglected to pay the same, and the sum of $3,684.63 remains unpaid.

(9.) That subsequently to the 15th day of January, 1882, a warrant was issued by the defendant in error, the Receiver of Taxes, to a marshal of said city for the collection of said tax; that the warrant has been returned unsatisfied, after demand of payment of said tax from the plaintiff in error; that one year has not elapsed since said refusal or the return of the warrant by the said marshal, and the petitioner, the Receiver of Taxes, has reason to believe that the plaintiff in error has debts, credits, and choses in action, or other personal property not taxed, elsewhere in the State of New York upon which levy can be made according to law (fols 1 to 6).

Third—Upon the foregoing petition the plaintiff in error was ordered to attend at a Special Term of the Court of Common Pleas on the 27th of July, 1882, to show cause why he should not be punished for his misconduct in neglecting and refusing to pay the tax (fol. 7).

Fourth—The defendant appeared pursuant to said order and interposed an affidavit in which he alleged as follows:

(1.) That he owned 5,463 shares of the capital stock of said bank; that said shares were not lawfully assessed for the year 1881 for the reasons stated in a demand theretofore served upon the Commissioners

of Taxes in the City of New York, of which a copy was annexed to the affidavit.

(2.) That the assessed valuation was not duly entered in the books called "The annual record of assessed valuation of real and personal estate" for the year 1881.

(3.) That there was no annual record of the assessed valuation of real and personal estate for the year 1881, with respect to said shares and capital stock of the National Broadway Bank, owned by the said deponent, kept in the office of said Commissioners, but only a mere list of stockholders, and the same has not been kept open for examination from the second Monday of January, 1881, until the first of May, 1881.

(4.) That deponent never saw any advertisement that the books of the said Commissioners were open, and is informed and believes that the *City Record* is not a newspaper, but a mere bulletin of official transactions having a very limited circulation.

(5.) That before April 30, 1881, deponent made application for reduction of the valuation of all shares of stock in said bank, by service of the demand referred to, and personally called upon the Commissioners at their office and requested them to comply with said demand, and made an affidavit as to the value of said shares, and also one as to his indebtedness of $57,000, which was thereupon deducted from the value of his said bank shares.

(6.) That the entire capital stock of the National Broadway Bank was invested in bonds of the United States, issued under the Act of July 14, 1870, which, by the terms of said act, are not subject to taxation in any form by State, municipal, or local authority.

(7.) That individual citizens of the City of New York have always been allowed to deduct their United States bonds in assessing the value of their taxable personal property, and the stock of the National Broadway Bank is valued higher in proportion than some other bank stock, notably the stock of the Importers' and Traders' National Bank.

(8.) That shares in the capital stock of the bank are assessed at their full market value, while real estate is assessed at 60 per centum of its value, and personal estate, with the exception of bank stock, at a much less rate.

(9.) That individual citizens of New York, engaged in the business of private banking, are allowed to deduct the value of United States bonds in assessing the value of their personal property.

(10.) That corporations owning bank stock are not taxed with the other stockholders, but are taxed as corporations, and are allowed to deduct their bonds of the United States in assessing the value of their capital stock.

(11.) That said deponent Palmer was not allowed to deduct that part of his bank shares which was invested in Government bonds, or to receive exemption for the same.

(12.) That the shares of the National Broadway Bank were assessed at a greater rate than other moneyed capital invested in fire insurance companies, railroad corporations, gas companies, and other corporations assessed and taxed under chapter 542 of the Laws of 1880 of the State of New York.

(13.) That there is no law for the taxation of moneyed capital in the

hands of the individual citizens of the State, when invested in the shares of corporations other than banks, and that any tax upon bank shares must therefore necessarily be at a greater rate than taxes upon shares in other corporations than banks (fols. 8 to 18).

The demand referred to in the above-recited affidavit was attached thereto, dated April 25, 1881.

In said demand the plaintiff in error required the Tax Commissioners to strike from the annual record aforesaid the names of all shareholders in said bank upon the following grounds:

(1.) That the shares in said bank owned by each of the said shareholders on the 10th day of January, 1881, have not been included in the valuation of personal property of the owner or holder.

(2.) That the Legislature has not determined and directed the manner and place of taxing the shares of national bank associations located within the State, in accordance with the provisions of section 5219 of the Revised Statutes of the United States.

(3.) That shares in said bank have been assessed at a greater rate than other moneyed capital in the hands of individual citizens of the State.

(4.) That no shareholder of said bank was liable on the 10th of January, 1881, or for any time subsequently thereto, for taxation by reason of ownership of stock in said bank.

(5.) That no one of said shareholders has been assessed for the year 1881 by reason of his ownership in the stock in said bank, in the manner or in the time prescribed by law.

(6.) That the assessment of each of the shareholders of said bank and the entry of his name in the annual record was erroneous, illegal, void and without jurisdiction.

In case the foregoing demand was refused, the plaintiff in error further demanded that the assessed value of each share be reduced to ten dollars.

This second demand is made upon the following grounds: That the entire value of the capital stock, as fixed by the Tax Commissioners, was $1,800,000; that the value of United States bonds held by the bank was $1,400,000; that the difference between these two sums, namely, the sum of $400,000, is the only amount taxable against the shareholders for the value of all the shares of the bank.

The number of shares being 40,000, the amount taxable for the value of each share upon this basis is ten dollars.

The demand then presented a further alternative, that in the event of a refusal of the foregoing demands the valuation of each share of stock of the bank should be reduced to the amount of $27, being 60 per cent. of the assessed value of each share of stock exclusive of real estate.

This demand is made upon the ground that the shares of the bank have been unequally assessed and illegally and erroneously overvalued, for the reason that large amounts of personal property, other than bank shares, have been overlooked and not discovered and not assessed by the Tax Commissioners for the year 1881, and that real property in the City of New York has been generally assessed for the year 1881 at not more than 60 per cent. of the sum for which such property under ordinary circumstances would sell (fols. 18 to 22).

On the part of the petitioners, affidavits of the Tax Commissioners, Thomas B. Asten and Edward C. Donnelly, were put before the Court, showing that the assessment against the plaintiff in error and the individual shareholders was made in the form and manner provided by statute. That the names of Mr. Palmer and the other shareholders in the National Broadway Bank were compiled from the books of the bank and the assessment made against the individual shareholders and not against the bank. A transcript of the annual record of assessed valuations was placed before the Court.

The method of valuing real estate for the purpose of taxation is set forth, and it is shown that it is the effort of the Tax Commissioners to ascertain and set down the full and fair value of such property.

The method of assessing personal property is also set forth, and it is shown that if, in any instance, moneyed capital in the hands of individual citizens of the State is not assessed at full value, or is assessed at a greater rate than are the shares of the various banks doing business in the City of New York, the same is due, not to any intentional act of the Commissioners, but to the great difficulty attending the determination of the amount of personal property held by the persons assessed (fols. 29–39).

It also appears by the copy of the affidavit made by the plaintiff in error before the Tax Commissioners on the 12th of April, 1881, that he then claimed a deduction of $57,000 on account of debts due by him, and that deduction was allowed (fol. 41).

Fifth—Upon this record the Court of Common Pleas pursuant to the statute made an order adjudging the plaintiff in error to have been guilty of misconduct in neglecting to pay the personal tax assessed and confirmed against him for the year 1881, and ordered and adjudged that he stand committed to the jail of the City and County of New York, there to remain charged with the said misconduct, until he shall have paid the said personal tax imposed upon him, unless the Court shall see fit sooner to discharge him (fols. 44–46).

From this order an appeal was taken to the General Term of the Court of Common Pleas by which said order was affirmed, and upon further appeal to the Court of Appeals of the State of New York the order of the General Term was affirmed and the proceedings remitted to the Court of Common Pleas; thereupon, by writ of error, the record and proceedings were sent to the Justices of the Supreme Court of the United States for inspection and review.

Digest of the Tax Laws of the State of New York.

The assessment of taxable property is made by a deputy tax commissioner between the first Monday of September and the second Monday of January.

Chap. 302 of 1859, § 7, p. 680.

The assessed valuations shall be entered in detail in the "Annual Record," which record is kept in the tax commissioner's office, open for examination and correction from the second Monday of January to April 30.

Chap. 302 of 1859, § 8, p. 681.

The "Annual Record" consists of large books, a full description of which, and the manner of their preparation, will be found at folios 100 to 108.

The assessed valuation of all personal property in the county shall be entered alphabetically in separate books from the real estate.

Laws of 1867, chap. 410, § 5, vol. 1, p. 982.

The stockholders of any bank, etc., shall be taxed on the value of their shares of stock therein, and said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, city, town or ward where such bank is located.

Laws of 1880, chap. 596, § 3, p. 889.

A description of the manner of preparing the "Annual Record," so far as it covers such stock, will be found at fols. 38, 39, Exhibit AA., pp. 21, 22.

Any person feeling aggrieved may apply within this period, be examined on oath, and have the assessment corrected.

Laws of 1859, chap. 302, § 10, p. 681.

If the Commissioners refuse to give him such relief as he thinks he should have, he may review their decision by *certiorari*.

Laws of 1859, chap. 302, § 20, p. 684.

Between May 1st and the first Monday of July the "assessment rolls" are prepared.

Laws of 1859, chap. 302, § 13, p. 682.

The manner of their preparation is shown at Exhibit CC, p. 24.

On the first Monday of July the "rolls" are delivered to the Board of Aldermen (formerly to the Supervisors), who estimate and assess the tax.

Laws of 1859, chap. 302, § 13; Laws of 1874, chap. 304; Laws of 1850, chap. 121, § 25; Laws of 1871, chap. 573, § 3.

The further provisions of law as to transmission to Receiver, notices by him, etc., are unnecessary to quote, not being discussed on this appeal, or are more particularly referred to under the several points.

Laws of 1850, chap. 121, § 27; Laws of 1843, chap. 230, Art. II., § 5; Laws of 1871, chap. 381, § 2; Laws of 1881, chap. 33, § 1. And see fols. 10–14.

This proceeding is brought under the provisions of chap. 230 of 1843, Art. II., §§ 12, 13, p. 326:

§ 12. In case of the refusal or neglect of any person to pay any tax imposed on him for personal property, if there be no goods or chattels in his possession upon which the same may be levied by distress and sale, according to law, and if the property assessed shall exceed the sum of one thousand dollars, the said receiver, if he has reason to believe that the person taxed has debts, credits, choses in action, or other personal property, not taxed elsewhere in this state, and upon which levy cannot be made according to law, may thereupon, in his discretion, make application, within one year, to the court of common pleas of the county or the supreme court, to enforce the payment of such tax.

§ 13. The court may impose a fine for the misconduct mentioned in the next preceding section, sufficient in amount for the payment of the tax assessed, and of the costs and expenses of the proceedings authorized by this act to enforce such payment, or to punish such misconduct; and the amount of such tax shall be paid out of such fine to the said receiver, who shall pay the same in like manner as the tax was required to be paid; and costs and expenses of such proceedings shall be paid out of such fine to the said receiver who made the application to enforce the payment of the tax.

POINTS.

FIRST POINT.

The case at bar is a proceeding to punish the plaintiff in error by fine and commitment for failure to pay a tax; it is therefore a collateral proceeding, in which insufficiencies in methods of procedure, or errors which would render the tax voidable and be sufficient to reverse and annul it in a direct proceeding to review it by certiorari, will not afford ground for relief to the plaintiff in error, or avail for his defense.

(1.) The proceedings for assessing valuations for purposes of taxation, and fixing the tax, are conducted under statutes which confer *quasi* judicial powers upon the assessing officers, and provide for opportunity to correct errors in the course of the proceedings.

The rolls containing the preliminary assessment are left open for correction and review, and public notice thereof published.

The assessed parties have an opportunity to appear before the Board and urge their objections to the valuation.

Laws of 1859, chapter 302, section 10, page 681.

If aggrieved by the final determination of the assessing officers, the remedy to review the action of that Board by certiorari to the Supreme Court is open to the parties assessed.

By the procedure last indicated, objections to the jurisdiction may be raised; errors in procedure, defects in authority, contravention of constitutional limitation may be urged as ground for relief, and the final judgment, if adverse to a claim of right under the Constitution or statutes of the United States, may, by writ of error, be brought before this Court for review.

People *vs.* Commissioners, 4th Wallace, 244.

(2.) In Stanley *vs.* The Supervisors, 121 U. S. Rep., 550, this Court has said, "To these boards of revision, by whatever name they may "be called, the citizen must apply for relief against excessive and "irregular taxation, where the assessing officers had jurisdiction to "assess their property. Their action is judicial in its character. They

"pass judgment on the value of the property upon personal examina-
"tion and evidence respecting it. Their action being judicial, their
"judgments in cases within their jurisdiction are not open to collateral
"attack. If not corrected by some of the modes pointed out by
"statute they are conclusive, whatever errors may have been committed
"in the assessment. As said in one of the cases cited, the money col-
"lected on such assessments cannot be recovered back in an action at
"law, any more than money collected on an erroneous judgment of a
"court of competent jurisdiction before it is reversed."

For errors not jurisdictional the Courts cannot take upon themselves, in a collateral action, the function of revising or avoiding the assessment.

Newman v. *Supervisors*, 45 N. Y., 676, 687.
Bank of Chemung v. *Elmira*, 53 N. Y., 49, 52.
Swift v. *Poughkeepsie*, 37 N. Y Reports, 511.
Bank of Commonwealth v. *The Mayor*, 43 N. Y. Rep., 184.

The plaintiff in error in this case stands in the attitude of a party against whom judgment has been recovered and who has neglected to review the judgment by appeal, or other direct proceeding; and now resists proceedings to enforce it by alleging its invalidity.

The defendants in error concede the right of the plaintiff in error to contest the validity of the assessment upon the ground that the statute under which it was laid is void, by reason of contravening the Constitution of the United States, or the statutes enacted by Congress; or for the reason that he has been deprived of liberty or property without due process of law.

Defendants, however, contend that all other errors assigned, in respect to determining the assessment or laying the tax, even if sufficient to entitle the plaintiff in error to a judgment avoiding assessment and tax, in a direct proceeding, are not available to him in this collateral proceeding.

(3.) The Court of Appeals of the State of New York, having decided adversely to the plaintiff in error in relation to all the assignments of error in which it is claimed that the assessing officer failed to comply with and fulfill the requirements of the State statute in relation to the method of procedure, form of assessment, oath of assessors, etc., the plaintiff in error is precluded from contending against that decision in this Court, because this Court is bound by the decision of the Court of Appeals as to the true construction of the State statute.

People v. *Weaver*, 100 U. S. Rep., 542.
Supervisors v. *Stanley*, 105 U. S. Rep., 310.

SECOND POINT.

The Tax Commissioners had jurisdiction, under chapter 596 of the Laws of New York of 1880, page 888, to assess the plaintiff in error as a stockholder in the National Broadway Bank in the City of New York, on the value of his shares of stock therein, for the purpose of taxation in the year 1881.

The Federal Statute in relation to the taxation of bank shareholders provides as follows (Revised Statutes of U. S., § 5219):

"Nothing herein shall prevent all the shares in any association from "being included in the valuation of the personal property of the owner "or holder of such shares, in assessing taxes imposed by authority "of the State within which the association is located; but the legislature "of each State may determine and direct the manner and place of taxing "all the shares of national banking associations located within the "State, subject only to the two restrictions, that the taxation shall not "be at a greater rate than is assessed upon other moneyed capital in the "hands of individual citizens of such State, and that the shares of any "national banking association owned by non-residents of any State shall "be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property "of associations from either State, county or municipal taxes, to the "same extent, according to its value, as other real property is taxed."

The State statute is drawn in careful conformity to the limitations of the Act of Congress.

Chapter 596 of the Laws of 1880, section 3, provides:

That the stockholders in every bank organized under authority of the State of New York, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said act also provides that "in the assessment of said shares each stockholder shall be "allowed all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual "citizens of this State, and the assessment or taxation shall not be at a "greater rate than is made or assessed upon other moneyed capital in "the hands of individual citizens of this State."

Provision is also made for deducting from the value of the share that proportion which is represented by real estate which is otherwise taxed.

This statute is in precise conformity to the permission given in section 5219 of the Revised Statutes of the United States, and evinces the most assiduous compliance with the limitations prescribed by the Act of Congress, as construed by the decisions of this Court.

The taxation of capital invested in National Banks has been the subject of much litigation. When the National Government had, for war purposes, issued its securities of various descriptions to large amounts, and promoted the formation of an extensive banking system, a considerable portion of the capital of the country promptly sought investment in those securities and in the corporations formed under Federal

statutes. It was thus largely diverted from investments which had theretofore borne the burden of local taxation, and a struggle began between the States seeking to retain, as far as might be, the right of requiring contribution from that capital to their local revenue, and the owners of that capital who desired to escape such contribution altogether.

It was first claimed both by the National and State banks that they could not be taxed by the States, because their capital was in whole or in part invested in Federal securities. It was decided by the Supreme Court of the United States that so much of the *capital* of National and State banks as was invested in United States securities could not be taxed, and that it made no difference whether the tax was imposed upon the capital or upon a valuation equal to the capital.

> *Peo. ex rel. Bank of Commerce* v. *Commissioners of Taxes*, 2 *Black.*, 620; *Peo. ex rel. Bank of Commonwealth* v. *Commissioners*, 2 *Black.*, 635 *(foot note)*; *Bank Tax Case*, 2 *Wallace*, 200.

An effort was then made to tax the shares, and litigation ensuing, it was finally decided that although a portion, or even the whole of the capital of a National or State bank might be invested in such securities, the *shares of stock* could be taxed in the hands of individual owners.

> *Van Allen* v. *Assessors*, 3 *Wall.*, 573; *Bradley* v. *The People*, 4 *Wall.*, 459; *People* v. *Commissioners of Taxes*, 4 *Wall.*, 244; *National Bank* v. *Commonwealth*, 9 *Wall.*, 353; *Lionberger* v. *Rouse*, 9 *Wall.*, 468.

After the decision of the Supreme Court in *Van Allen* v. *Supervisors*, the Legislature of the State of New York passed a law providing for the taxation of shares in National and State banks, being chap. 761 of the Laws of 1866, p. 1647.

To conform to the provisions of the Act of Congress of 1864, and to the decision in *Van Allen* v. *Supervisors*, the Act of 1866 was passed. Its first section (which, with a slight change, to be noticed *post*, p. 11, is identical with § 3 of chap. 596 of 1880), provided as follows:

"No tax shall hereafter be assessed upon the capital of any bank or "banking association organized under the authority of this State, or of "the United States, but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock "therein; such shares shall be included in the valuation of the personal "property of such stockholder, in the assessment of taxes at the place, "town, or ward where such bank or banking association is located, and "not elsewhere, whether the said stockholder reside in said place, town "or ward, or not, but not at a greater rate than is assessed upon other "moneyed capital in the hands of individuals in this State."

The banks, after the passage of this law, next set up the claim that such portion of the capital of any bank as was invested in the securities of the United States must be deducted in ascertaining the value of the shares. The Supreme Court, however, decided that the shares were to be taxed at their value, without regard to the character of the securities in which the capital of the bank was invested. *People* v. *Commissioners of Taxes*, 4 *Wall.*, 244. The validity of the Act of 1866 was also recognized by the Supreme Court in *People ex rel. Gallatin Bank* v.

Commissioners, 94 U. S., 415, in which it was decided that shares of stock were to be taxed at their actual instead of their par value.

The N. Y. Revised Statutes provide that there shall be set down in the assessment rolls, opposite the name of each taxable inhabitant, "the "full value of all the taxable property owned by such person, *after* "deducting the just debts owing by him."

Rev. Stats., 7th Edn., vol. II., p. 991.

As far back as 1867, it was claimed, under the authority of this provision of the Revised Statutes, that the holder of stock in National and State banks was entitled to have such deductions made from the valuation of his shares. The Court of Appeals decided adversely to such claim, holding that the Act of 1866 did not allow of such deduction (*People ex rel. Cagger* v. *Dolan*, 36 *N. Y.*, 59), and no revision of that decision was sought or obtained. Subsequently, however, that question was taken to the U. S. Supreme Court, which decided that if the Act of 1866 was so construed, it was in conflict with the provisions of § 5219 of the U. S. Revised Statutes.

People ex rel. Williams v. *Weaver*, 100 U. S., 539, 547.

It was next claimed by the banks that the effect of this last decision was to hold the Act of 1866 unconstitutional, and that no assessment or tax laid under it was valid. Pending this last phase of the litigation, the present Act, chapter 596 of 1880, was passed. It expressly provides for the deduction of debts from the valuation of each stockholder's shares by the following clause:

"But in the assessment of said shares each stockholder shall be "allowed all the deductions and exemptions allowed by law in assessing "the value of other taxable personal property owned by individual "citizens of this State" (§ 3).

The claim of the banks last referred to, with other questions raised by them as to the authority of any assessment under the Statute of 1866, was soon afterwards passed upon by the courts. In the case of *Supervisors* v. *Stanley*, 105 U. S., 305, it was held that the statute was not *void*, because it did not provide for the deduction of a shareholder's debts from the assessed value of his stock, nor was the assessment thereunder of the shares of stock in National Banks of no effect. If the stockholder had no debts to deduct, the assessment was valid, and if he had debts the assessment excluding them from computation is voidable, but the assessing officers act within their authority until they are duly notified that he is entitled to deduct such debts.

It was averred that the assessment of shares of stock of the appellant's bank was at a greater rate than was assessed upon shares of stock in a certain other bank. To this the Court replied (pp. 317-318) that the shares of the plaintiff "are not relieved from taxation, because a "single bank of the State has been favored by mistake or by intention. "*For errors of this kind the statutes of New York provide the correction,* "*which should be taken in time,* and we should be very reluctant to "hold that, when it has been shown that a single bank or a single indi- "vidual has been taxed less than he should be, all other taxes, however "just, are thereby invalidated."

To the further averrment that the assessment was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of New York, it was replied (p. 318):

"If by this it is supposed that a few individual instances may be "shown of partial assessments favoring citizens as compared with the "national banks, we think it is erroneous. But if it is intended to "allege that apart from the question of the right of the shareholder to "deduct for his debts * * * * it can be "proved that the assessors habitually and intentionally, or by some rule "prescribed by themselves, or by some one whom they were bound to "obey, assessed the shares of the national banks higher in proportion "to their actual value than moneyed capital generally, then there is "ground for recovery, and a hearing as to that should be granted."

As a result of the extensive litigation, which has been promoted by the effort to tax capital invested in National Banks, it happens that the answers to the various objections urged by the appellant to the validity of the statute may each and all be fortified by authority.

First—The decision of the Court of Appeals, in this case, has heretofore been brought to the attention of this Court and received its emphatic approval.

Mercantile Bank v. *N. Y.*, 121 U. S. Rep., p. 158.

Second—The objections of the plaintiff in error to the said statute as they are stated in his demand served upon the assessing officers, have been considered and severally overruled by this Court.

(1.) It is urged that there should be an abatement of the amount of the assessment of such apportionate part of the value of each share as fairly represents the Government securities held by the bank (fol. 20).

This objection was held unsound in

People v. *Commissioners*, 4 Wallace, 244.
Mercantile Bank v. *New York*, 121 U. S. Rep., 149.

(2.) That the stock of the Importers' and Traders' National Bank, and of some other banks not specified, is valued relatively less than the stock of the National Broadway Bank; that the real estate is valued at a less rate; that much personal property has been overlooked and omitted in preparing the assessment list.

These objections are of that nature which though effective, if proven before the Assessors, or in a direct proceeding to review their action, the plaintiff in error is precluded from maintaining in this *collateral* proceeding; and further, they are contradicted by the answering affidavits.

And even if the facts were as alleged by the plaintiff in error, these individual instances would afford no ground for impeaching these assessments.

Supervisors v. *Stanley*, 105 N. Y. Rep., 318.
Mercantile Bank v. *New York*, *supra*.
Hepburn v. *School Directors*, 23 Wallace, 480.

In order to establish the proposition that chapter 596 of the Laws of 1880 did not confer upon the Assessors jurisdiction to tax him on

his bank shares, the plaintiff in error must show that the *necessary* result of an assessment in the method provided for in that act, is to tax moneyed capital invested in the National Banks at a greater rate than other moneyed capital in the hands of individual citizens. It is not enough if he shows that such result has been in fact accomplished by the negligence or improper conduct of the assessing officers; or in consequence of a mistaken interpretation of the act, or by the failure of those administering the act to allow him all the exemptions and deductions which the law affords him.

(3.) The plaintiff in error further objects, in substance, that the provision of the Revised Statutes of the United States, authorizing the taxation of shareholders in National Banks is beyond the power of Congress, and that the law authorizing such taxation is unconstitutional, because it impairs the obligation of the contracts under which the bonds of the United States were issued.

These objections were held unsound in Van Allen against the Assessors, 3 Wallace, 573;

Peo. *ex rel.* Gallatin Bank against the Commissioners, 94 U. S., 415.

(4.) The plaintiff in error further objects in substance that no statute of this State provides for the taxation of shares in corporations other than banks; that therefore the tax on moneyed capital invested in the bank shares is at a greater rate than that of the moneyed capital of individual citizens invested in other corporations.

This objection is answered by the decision of this Court in People against the Commissioners, 4 Wallace, 244, as follows:

The answer is (1st) (p. 256), "that upon a true construction of this "clause of the act the meaning and intent of the law-makers were, that "the rate of taxation of the shares should be the same, or not greater "than upon the moneyed capital of the individual citizen which is "subject or liable to taxation. That is, no greater proportion or per-"centage of the tax in the valuation of the shares should be levied than "upon other moneyed taxable capital in the hands of citizens."

(2d.) That the standard of comparison intended by the statute refers only to capital so employed as to come into competition with the National Banks; only capital employed in such operation is, within the meaning of the Statute of Congress, "moneyed capital."

In Mercantile Bank *v.* New York, 121 U. S., 156, it is said, "These "(loaning, receiving deposits, etc.) are the operations in which the "capital invested in national banks is employed, and it is the nature of "that employment which constitutes it in the eye of the statute "'moneyed capital.'

"Corporations and individuals carrying on these operations do "come into competition with the business of national banks, and "capital in the hands of individuals thus employed is what is intended "to be described by the act of Congress."

THIRD POINT.

The fact that the Law of the State of New York provides a separate system for the taxation of certain corporations, joint stock companies, and associations (Chapter 542, Laws of 1880, page 763), by which the tax is imposed upon the capital of the corporations, and no taxation is imposed upon the shareholders, in respect of their shares, does not create a discrimination against shareholders in National Banks, or violate the restriction that such shares shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens.

(1.) The shares of stock held by individual citizens in such corporations, represents capital employed according to the respective powers and privileges of such corporations. Such shares are not included within the meaning of the term "moneyed capital in the hands of individual citizens," as used in the statute.

The meaning of the statute has been defined by this Court in the Mercantile Bank against New York, 121 U. S. Rep., 154, as follows: "The key to the proper interpretation of the act of Congress is its "policy and purpose. The object of the law was to establish a system "of national banking institutions, in order to provide a uniform and "secure currency for the people and to facilitate the operations of the "Treasury of the United States. The capital of each of the banks in "this system was to be furnished entirely by private individuals; but "for the protection of the government and the people, it was required "that this capital, so far as it was the security for its circulating notes, "should be invested in the bonds of the United States. These bonds "were not subjects of taxation; and neither the banks themselves nor "their capital, however invested, nor the shares of stock therein held "by individuals could be taxed by the States in which they were lo-"cated without the consent of Congress, being exempt from the power "of the States in this respect, because these banks were means and "agencies established by Congress in the execution of the powers of "the government of the United States.

"It was deemed consistent, however, with these national uses, and "otherwise expedient, to grant to the States the authority to tax them "within the limits of a rule prescribed by the law.

"In fixing those limits it became necessary to prohibit the States "from imposing such a burden as would prevent the capital of indi-"viduals from freely seeking investment in institutions which it was "the expressed object of the law to establish and promote.

"The business of banking, including all the operations which dis-"tinguish it, might be carried on under State laws, either by corporations "or private persons, and capital in the form of money might be invested "and employed by individual citizens in many single and separate "operations forming substantial parts of the business of banking.

"A tax upon the money of individuals, invested in the form of

" shares of stock in national banks, would diminish their value as an " investment and drive the capital so invested from this employment, " if at the same time similar investments and similar employments " under the authority of state laws were exempt from an equal burden. " The main purpose, therefore, of Congress, in fixing limits to state tax- " ation on investments in the shares of national banks, was to render it " impossible for the State, in levying such a tax, to create and foster an " unequal and unfriendly competition, by favoring institutions or in- " dividuals carrying on a similar business and operations and invest- " ments of a like character. The language of the act of Congress is to " be read in the light of this policy.

" Applying this rule of construction, we are led in the first place, " to consider the meaning of the words 'other moneyed capital' as " used in the statute. Of course it includes shares in national banks ; " the use of the word 'other' requires that.

" If banks shares were not moneyed capital, the word 'other' in " this connection would be without significance. But 'moneyed " capital' does not mean all capital the value of which is measured in " terms of money. In this sense, all kinds of real and personal property " would be embraced by it, for they all have an estimated value as the " subjects of sale. Neither does it necessarily include all forms of in- " vestment in which the interest of the owner is expressed in money. " Shares of stock in railroad companies, mining companies, manufactur- " ing companies, and other corporations, are represented by certificates " showing that the owner is entitled to an interest, expressed in money " value, in the entire capital and property of the corporation, but the " property of the corporation which constitutes its invested capital may " consist mainly of real and personal property, which in the hands of " individuals no one would think of calling moneyed capital, and its " business may not consist in any kind of dealing in money or com- " mercial representatives of money.

" So far as the policy of the government in reference to national " banks is concerned, it is indifferent how the States may choose to tax " such corporations as those just mentioned, or the interest of individ- " uals in them, or whether they should be taxed at all. Whether " property interest in railroads, in manufacturing enterprises, in min- " ing investments, and others of that description, are taxed or exempt " from taxation, in the contemplation of the law, would have no effect " upon the success of national banks.

" There is no reason, therefore, to suppose that Congress intended, " in respect to these matters, to interfere with the power and policy of " the States. The business of banking, as defined by law and custom, " consists in the issue of notes payable on demand, intended to circulate " as money where the banks are banks of issue ; in receiving deposits " payable on demand ; in discounting commercial paper ; making loans " of money on collateral security ; buying and selling bills of exchange ; " negotiating loans, and dealing in negotiable securities issued by the gov- " ernment, state and national, and municipal and other corporations. " These are the operations in which the capital invested in national banks " is employed, and it is the nature of that employment which constitutes " it in the eye of this statute, moneyed capital.' Corporations and in-

" dividuals carrying on these operations do come into competition with " the business of national banks, and capital in the hands of individuals " thus employed is what is intended to be described by the Act of " Congress.

" That the words of the law must be so limited appears from another " consideration ; they do not embrace any moneyed capital in the sense " just defined, except that in the hands of individual citizens.

" This excludes moneyed capital in the hands of corporations, " although the business of some corporations may be such as to make " the shares therein belonging to individuals moneyed capital in their " hands, as in the case of banks. A railroad company, a mining com- " pany, an insurance company, or any other corporation of that descrip- " tion, may have a large part of its capital invested in securities payable " in money, and so may be the owners of moneyed capital ; but, as we " have already seen, the shares of stock in such companies held by in- " dividuals are not moneyed capital."

Banks are not taxable under the Act of 1880 (chapter 542), and none of the corporations, joint stock companies or associations, taxable under that act, compete with the National Banks in business or are engaged in any similar employment.

(2.) Under the system of taxation established by the Act of 1880, in respect to the capital of such corporations, no discrimination is, in fact, established against shareholders of National Banks.

By the terms of the Act of that year (chapter 542), every corporation, joint stock company, and association (incorporated or doing business in this State), *except savings banks, life insurance companies, banks, foreign insurance companies and manufacturing corporations*, is required to return each year, to the State Comptroller, the amount of its capital stock, and the dividends paid thereon.

If such dividends are less than 6 per cent., certain officers of the corporation are to prepare and file a sworn appraisal of the value of such stocks, which appraisal may be corrected by the Comptroller, subject to review by the Board of Equalization.

These corporations are required to pay to the State Treasury annually a tax to be computed as follows :

If a dividend of 6 per cent. or over is paid, then the tax is at the rate of one-quarter mill on the capital stock for every 1 per cent. of such dividend ; if no dividends, or none amounting to 6 per cent. are paid, then the tax is at the rate of $1\frac{1}{2}$ mills upon each dollar of the valuation made in the manner before referred to,

The lands and real estate of the corporations of this class are to be taxed as before, but upon paying to the State Treasury the tax aforesaid, their capital stock and personal property is declared to be exempt from further assessment or taxation *for State purposes*. (Chapter 542 of 1880 ; chapter 361 of 1881). *People ex rel. Westchester Fire Ins. Co.* v. *Commissioners*, 91 N. Y., 574. Their obligation, however, to contribute for *local* taxes in the ordinary way remains, and as appears from the record in this case (fols. 60–64), the local taxes of 1881 amounted to $26,801,080, out of a total of $31,071,840, equivalent to a rate of 225 per cent. out of a total rate of 262 per cent.

It is claimed by the plaintiff in error that the effect of this legis-

lation is to secure to the corporations aforesaid a very moderate rate of taxation, and to operate so as to discriminate against national banks, and subject moneyed capital invested in the shares of such banks to taxation "at a greater rate than is assessed upon other moneyed capital in the "hands of individual citizens of (this) State."

Therefore, says the plaintiff in error, the statutes of this State providing for taxing National Banks violate the restrictions of the U. S. Revised Statutes and are *void*.

It does not, however, follow that the taxes upon such corporations are less than the taxes on bank shares.

The corporations comprehended within the act are required to pay annually a tax—

(*a*) Upon the capital stock at a rate fixed by the dividends paid, or upon an appraisement of the value of the stock.

(*b*) After such payment to the State Treasury their obligation to contribute to taxation for local purposes still remains.

In the Mercantile Bank *v.* New York, 121 U. S., 158, this Court quoted with approval the language of the Court of Appeals in relation to the taxation of municipal corporations other than banks under the act in question, as follows:

"Our (the New York) system of laws with reference to the taxa- "tion of incorporated companies and capital invested therein has been "carefully framed with the view of reaching all taxable property and "subjecting it to equality of burden, so far as that object is attain- "able in a matter so complex. In view of the wide variation in the "employable value of such investments, and the frequent mutations in "their condition, it is by no means certain that this object has not been "attained with reasonable accuracy. It is quite clear, from even this "cursory review of the statutes, that if any discrimination is made by our "laws in taxing capital invested, it is not to the prejudice of that "employed in banking corporations."

The Supreme Court of Massachusetts say, in *Providence Inst. for Savings* v. *Boston*, 101 Mass., 583,

"We think that this clause was obviously intended to preclude the "possibility that property of that description should be singled out for "special and peculiar taxation. Its operation would be, to prevent "oppressive and hostile discriminations unfavorable to the banks. A "state, if there were no such restrictions, might so arrange its method "of taxation as substantially to expel the national banks from its limits. "It must be assumed that this system of banking was devised by the "national legislature for national purposes, as an agency of the gov- "ernment in the exercise of its powers and functions, and that for "public reasons it was intended that it should be general and uniform "throughout the country. It might well seem reasonable to congress "to take some precaution that the banks in each state should be taxed "only at the same rate, and generally in the same manner, as the "moneyed capital of individual citizens is taxed in the same state. "The language of the act of congress does not require the strict, "literal and narrow interpretation that might be proper in the construc- "tion of a penal statute. It means, merely, as we think, that such

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" shares shall be taxed upon a general system and in compliance with a " set of rules and principles applied alike throughout the state to the " taxation of all moneyed capital."

And see Lionberger v. *Rouse*, 9 Wall., 476.
Tappan v. *Merchants' Bank*, 19 Wall., 504.
Everitt's Appeal, 71 Pen. Stat., 219.
McVeagh v. *Chicago*, 49 Ill., 329.

In order to sustain his position the appellant must show that as a *necessary result* of the different systems of taxation moneyed capital in bank shares is discriminated against. He cannot, of course, question the right of the State to classify property and to tax different classes according to different systems; the only complaint which can be presented to the Court in his behalf is that the classification is a vicious one, because the application of it will necessarily and inevitably produce an inequality in adjusting the burdens of taxation, so that moneyed capital of the class he represents may be required to bear a heavier burden than other moneyed capital in the hands of individuals. This, it is submitted, he does not show in the case at bar. Whether a tax *for State purposes* laid on capital stock, yearly determined in amount by the dividends declared on that stock, and paid by the corporation, bears less heavily on the individual stockholder in such corporation than would a similar tax imposed upon the valuation of such individual's ownership, reduced by an allowance for his personal debts is a question which no court, on the facts here shown, can answer. Unless appellant can demonstrate that an affirmative answer *must* be given to this question, he cannot claim that chapter 596 of 1880 is rendered void by reason of a separate system of taxation for certain corporations under chapter 542 of 1880.

(3.) The argument which the plaintiff in error finds upon the comparison of the tax upon bank shareholders with the taxation upon the capital of trust companies and the exemption of savings banks has been specifically and fully answered by this Court in the Mercantile Bank *vs.* New York, 121 U. S. Rep., 154.

FOURTH POINT.

The claims advanced by the plaintiff in error that Chap. 230 of the Laws of 1843 is unconstitutional, as depriving him of liberty and property without due process of law, and without a trial by jury, and that this proceeding is not maintainable because he has not had an opportunity to call and cross-examine witnesses, are unsound.

These objections are not formulated in the papers presented on the motion, but will be found succinctly stated in the opinion of the Court below (fols. 97, 98). Plaintiff in error contends that his property can be taken or his person seized only as the ultimate issue of a proceeding in which there has been secured to him—

(*A.*) An opportunity to be heard.

(*B.*) The right to cross-examine witnesses whose statements may affect his right.

(*C.*) The right to produce witnesses.

(*D.*) The right of appeal.

(*E.*) A trial by jury.

(*F.*) Due process of law in conducting the proceeding.

The proceeding at bar is purely an executive process to enforce the tax which has been levied in the manner provided by law.

It is in every respect similar to an execution against the person when issued upon a judgment in a case where such process is authorized by law.

If, therefore, the tax has been levied with due regard to the rights of the plaintiff in error, and he has had notice "and opportunity to question the correctness of the proceeding of the Assessors and to review them if he felt aggrieved thereby, he cannot now be heard in respect to the regularity of the proceedings or the propriety of the action of the Assessors."

The only provision of the taxing statutes on the subject of notice is found in chapter 302 of the Laws of 1859, viz.:

"§ 9. The said [Tax] Commissioners, previous to and during the time "said books are open for inspection, shall advertise the fact in the sev- "eral newspapers, or *in such manner as they may deem most advisable.*"

It appears that in this particular year the Commissioners did in fact deem an advertisement in the *City Record* to be the most advisable manner of advertising the fact that the books were open (fol. 5). Notice has, therefore, been given in the way prescribed by the Legislature, and such notice is all that is required.

Matter of De Peyster, 80 N. Y., 572.
Matter of Lowden, 89 N. Y., 548.

In fact, where a general law fixes the time and place of hearing, as it does in this case, the taxpayer must take notice of it, and no further notice is required.

Methodist Pr. Church v. *Baltimore*, 6 Gill, 391.
O'Neil v. *Bridge Co.*, 18 Md., 1, 26.
Cooley on Taxation (2d Ed.), p. 364.

Mr. Palmer appeared before the Commissioners pursuant to notice, was heard, and procured a reduction of his tax.

The rights which the plaintiff in error avers to have been violated are those secured to him by one or the other of the following clauses:

"No person shall be deprived of life, liberty or property, without "due process of law."

Constitution of U. S., Amendment V.

"Nor shall any state deprive any person of life, liberty or prop- "erty, without due process of law."

Id., Amendment XIV.

These clauses, however, have repeatedly been interpeted, and have always been held to secure to the individual only the full measure

of his rights existing when the constitutions containing them were adopted, or secured by other provisions of the same instruments.

Murray's Lessee vs. *Hoboken Land Co.*, 18 How., U. S., 272.

Weimer vs. *Bunbury*, 30 Mich., 201.

State vs. *Allen*, 2 McCord, 56.

Rockwell vs. *Nearing*, 35 N. Y., 308.

To determine what was *due process of law* at the time of the adoption of these constitutions, we must turn to the legislation and practice of the mother country; and the attention of the Court is therefore directed to the Appendix to these points, where will be found a brief digest of some of the laws regulating assessments and taxation. It exhibits a most remarkable illustration of the conservatism of that great race from which we derive our social, financial and political institutions. Unchanged for centuries, the rules and regulations concerned with this subject may be traced back till, in a remote age, is found, not the germ, but the perfected prototype of the system in force to day. "An act for subsidie of two-fifteenths to be granted to the King." passed in the twelfth year of the reign of the first Tudor, is, in substance, paraphrase of the Revised Statutes of the State of New York.

The Act of 1843 provides no novel process. The sections which permit the distress of the individual's goods and the seizure of his person, are a direct survival of similar sections in force and acted upon in England for generations before the Constitutions of the State and nation were framed.

The propriety and effect of the citation of such legislative precedents has been abundantly established by authority.

Mr. Justice CURTIS, delivering the opinion of the Court in the leading case of *Murray's Lessee*, in 18th How., U. S., pursued the same line of reasoning in his attempt to ascertain the meaning of the phrase "due process of law" as employed in the Federal Constitution (see pp. 276, 277): "To what principles, then, are we to resort to ascertain "whether this process enacted by Congress is due process? To this the "answer must be two-fold. We must examine the Constitution itself "to see whether this process be in conflict with any of its provisions. "If not found to be so, we must look to those settled usages and modes "of proceeding existing in the common and statute law of England "before the emigration of our ancestors, and which are shown not to "have been unsuited to their civil and political condition by having been "acted on by them after the settlement of this country. We apprehend "there has been no period since the establishment of the English mon-"archy, when there has not been, by the law of the land, a summary "method for the recovery of debts due to the crown, and especially "those due from receivers of the revenues." The learned Justice afterwards says (p. 280): "For though 'due process of law' generally "implies and includes *actor, reus, judex*, regular allegations, opportunity "to answer and a trial according to some settled course of judicial pro-"ceedings [cases cited], yet this is not universally true. There may be, "and we have seen that there are cases, under the law of England "after Magna Charta, and as it was brought to this country, and acted "on here, in which process, in its nature final, issues against the body,

"lands and goods of certain public debtors without any such trial." He afterwards points out that tax debtors are within this rule. He further says (pp. 279, 280): "This legislative construction of the Con-"stitution, commencing so early in the Government, when the first "occasion for this manner of proceeding arose, continued throughout "its existence, and repeatedly acted on by the judiciary and the execu-"tive, is entitled to no inconsiderable weight upon the question whether "the proceeding adopted by it was 'due process of law.'"

Murray's Lessee v. *Hoboken Land Co.*, 18 How., U. S., 272.

See also the dissenting opinion of Judge NELSON in the case of *Taylor* v. *Porter* (4 Hill, 140).

It had been similarly held long before by the Court of Appeals in Kentucky, in the following forcible language: "Government never "did, either before or since the constitution, extend or grant the right "of trial by jury to every controversy between herself and any of her "citizens. To criminal and penal offenses the right belonged; but to "public debtors it did not. Hence taxes were always recoverable, "not only without a jury, but even without a judge, and the assessment "of ministerial officers has been made to operate as an execution on the "citizen, and the collector could distrain, and any public collector could "be subjected to judgment on motion for the amount."

Harris v. *Wood*, 6 Monroe, 642, 643.

It was also said by Mr. Justice MILLER delivering the opinion of the Court in *McMillen* v. *Anderson* (95 U. S., 37, 41): "The nation from "whom we inherit the phrase 'due process of law' has never relied upon "the courts of justice for the collection of her taxes, though they passed "through a successful revolution in resistance to unlawful taxation."

Mr. Justice COOLEY pursues the same line of reasoning, in delivering the opinion of the Court in the case of *Weimer* v. *Bunbury* (30 Mich., 201, 213: "There is nothing technical, or, we think, obscure, in the re-"quirement that process which divests property shall be due process of "law. The constitution makes no attempt to define such process, but "assumes that custom and law has already settled what it is. Even in "judicial proceedings we do not ascertain from the constitution what "is lawful process, but we test their action by principles which were "before the constitution, and the benefit of which we assume that the "constitution was intended to perpetuate. If there existed, before that "instrument was adopted, well known administrative proceedings which, "having their origin in a legislative conviction of their necessity, had "been sanctioned by long and general acceptance, we are no more "at liberty to infer an intent in the people to prohibit them by im-"plication from any general language, than we should be to infer an "intent to abridge the judicial authority by the use of similar words. "The truth is, the bills of rights in the American constitutions have not "been drafted for the introduction of new law, but to secure old prin-"ciples against abrogation or violation. They are conservatory instru-"ments rather than reformatory; and they assume that the existing "principles of the common law are ample for the protection of indivi-"dual rights, when once incorporated in the fundamental law, and thus "secured against violation.

"We are, therefore, of necessity driven to an examination of the "previous condition of things, if we would understand the meaning of "due process of law, as the constitution employs the term. Nothing "previously in use, regarded as necessary in government and sanctioned "by usage, can be looked upon as condemned by it. Administrative "process of the customary sort is as much due process of law as judicial "process.

"We should meet a great many unexpected and very serious em- "barrassments in government if this were otherwise. The words, it "has very justly been said, 'were intended to secure the individual "'from the arbitrary exercise of the powers of government, unre- "'strained by the established principles of private rights and distribu- "'tive justice.' *Per* JOHNSON, *J.*, in *Bank of Columbia* v. *Okley*, 4 "*Wheat.*, 235. It has been said, with special reference to process for "collection of taxes, that 'any legal process which was originally "'founded in necessity, has been consecrated by time, and approved "'and acquiesced in by universal consent, must be considered an ex- "'ception to the right of trial by jury, and is embraced in the alter- "'native law of the land.' *State* v. *Allen*, 2 *McCord*, 56. In *High* v. "*Shoemaker*, 22 *Cal.*, 363, the same doctrine was held in a revenue case. "In *Rockwell* v. *Nearing*, 35 *N. Y.*, 308, which is quoted for defendant "in error as sustaining his position, the opposite view is very distinctly "taken. 'There are,' says PORTER, *J.*, 'many examples of summary "'proceedings which were recognized as due process of law at the date "'of the constitution, *and to these the prohibition has no application.*' "Yet the same Judge in a previous portion of his opinion, had quoted "with approval the general language of other cases, which might be "understood as implying the necessity of a judicial hearing to due pro- "cess of law; and the case is an illustration of the danger of deducing "general principles to govern one class of cases from isolated expres- "sions made use of in deciding another class."

These authorities appear conclusive as to the effect of a uniform course of legislative action prior to and contemporaneous with the Constitution as determining what was "*due process of law*" within the contemplation of the authors of the organic law.

So, too, there is abundant authority for the proposition that a person taxed is not entitled under the pretext of being secured a *hearing*, to insist upon a formal judicial determination as to the value of his property and his liability to taxation.

Upon this question the language of that eminent lawyer, Judge DENIO, who delivered the opinion of the Court in the *Matter of the Trustees N. Y. P. E. Pub. School* (31 N. Y., 574), seems almost conclusive so far as the State of New York is concerned. He says (pp. 583-584):

"I have not laid any stress upon the circumstances that all the parties "having an apparent interest were notified and actually appeared in "the proceedings which followed the presentation of the petition of the "school corporation. The case not being in its nature within any of "the general laws which regulate judicial processes, it was sufficient "if the parties promoting the proceedings conformed to the special pre- "scriptions of the statute; and this appears to have been done. And "it was not essential to the constitutional legality of the statute that it

" should have authorized a jury trial, or in any other way have con-
" formed to the rules which relate to judicial controversies between
" citizen and citizen. In executing the taxing power, the Legislature
" provides such agencies and safeguards against surprise, mistake or in-
" justice, as is thought expedient. It is manifestly proper that the tax-
" payers should have notice of the imposition proposed to be laid upon
" them, and an opportunity for making suggestions and explanations to
" the proper administrative board or officers; and this is generally
" secured in all well-considered systems of taxation. But it is for the
" Legislature to determine and prescribe in every case what shall be
" sufficient, and there is not, that I am aware of, any constitutional
" provision bearing on the subject."

The underlying principle upon which the above-quoted conclusions are based, a principle supported by the language of courts and law writers, may be formulated in the proposition that *proceedings for the imposition of taxes are purely administrative, and not judicial* in their character.

The first citation that we make is from the opinion of Judge DENIO in the Matter *of the Trustees N. Y. P. E. Pub. School* (31 N. Y.).

He says (page 579): " When the State or a local division of it act-
" ing under a law of the State, seizes and sells land for the non-pay-
" ment of taxes or of public charges in the nature of taxes imposed
" on such land, the proceeding *is administrative and not judicial.* The
" Legislature may or may not make use of judicial forms or judicial
" tribunals, as shall seem most convenient or most conducive to the object
" in view, and most advantageous to the State and to the taxpayers.
" The general laws for the assessment and levying of State and county
" taxes, and the special statutes under which assessments are laid and
" collected in cities and villages, are examples of this kind of legislation.
" No judgment of a Court is ordinarily required from the commence-
" ment to the conclusion of the process, and if a judicial agency for
" some part of the proceeding is provided in particular cases, * * *
" *it is not because the matter is judicial in its nature*, or because such
" a mode of determining questions is in such cases required by any
" provision of the Constitution, but merely from considerations of con-
" venience and general propriety."*

In his treatise on Taxation, Judge COOLEY, after saying that it is manifest that the taxing power is legislative, says (2d Ed., p. 43): " It is
" still more manifest that the power to tax is not judicial." And again (at page 46): " In some of the states the county courts or county jus-
" tices are empowered to make the county levies. But these, although
" exercising inferior judicial functions, are really administrative boards,
" possessing an authority corresponding to that which is exercised in
" other states by county commissioners or boards of supervisors.
" Their action in ordering taxes is *quasi* legislative, and governed by
" the same rules as other legislative action."

No language, however, can be more felicitous and forcible upon this point than that employed by Judge COOLEY in his opinion in *Weimer*

* See also Judge CURTIS' statement as to the double capacity in which the Baron of the Exchequer acted—as auditors and as judges (18 How. [U. S.], 282).

v. *Bunbury* (30 Mich., 201), in explanation of the constitutional guaranty of "due process of law." He says (p. 211):

"There is nothing in these words, however, that necessarily implies "that due process of law must be judicial process. Much of the pro- "cess by means of which the government is carried on and the order "of society maintained, is purely executive or administrative.

* * * * *

"But the proceedings (p. 212) for the levy and collection of "the public revenue afford still better illustration. Almost univer- "sally these are conducted without judicial forms, and without the in- "tervention of the judicial authority; the few cases in which "statutes have required the action of courts being exceptional. *Where* "*such action is not required, the proceedings are regarded as purely* "*administrative, and any hearing allowed to parties in their progress* "*has not been in the nature of a trial, but as a means of enlightening* "*the revenue officers upon the facts which should govern their action.* "*This has been so from time immemorial, and it has never been sup-* "*posed that the taxpayer had a constitutional right to resist the tax* "*because he had never had any judgment against him on a judicial* "*hearing to fix its amount.*"

"There are, unquestionably, cases in which expressions have been "used implying the necessity for a common law trial before, in any in- "stance, a man can be deprived of his property; but they will be found "on investigation to be cases calling for no such sweeping statement. "*If any Court has ever decided that judicial proceedings are of consti-* "*tutional necessity in appropriating property under the power of taxa-* "*tion, the case has not been brought to our attention, and has been* "*overlooked in our investigations.* This would be most extra- "ordinary if the necessity existed, for tax systems similar to "our own have prevailed ever since our government was "founded, and it cannot be said that tax laws are usually so popular "as to disarm every person of any legal objections which he "might suppose available to relieve him of their burdens. On the con- "trary, no laws are contested more vigorously, and with none are people "more critical in looking after defects and infirmities. It may be "safely asserted, without fear of contradiction, that if the collection of "the revenue could only be made through legal proceedings, the true "principle would not have been left to so late a discovery, but the "wheels of government would long ago have been blocked by litigious "parties until an entirely new system could be substituted. And it "need hardly be said that any new system in which courts should be "made the administrators of the revenue would necessarily be so "cumbrous, and so subject to impediments and delays, as to make a con- "stitutional provision urging it as a great public inconvenience."

This language clearly indicates the origin of the principle above stated; *the public necessities forbid that the imposition of taxes should be subject to the uncertainty and procrastination of "the law's delay."*

To the words of Judge COOLEY last quoted, may be added the following statement from his work on taxation (p. 50): "There is no room "for the supposition that in a matter of this public importance, where "promptness in collection is always desirable, and often imperative,

"dilatory proceedings of this nature were within the contemplation of "the people when consenting to any general provision of the consti- "tution. It is safer, and, as we believe, more correct to say that our "constitutions have been framed and agreed upon in view of an im- "memorial practice and rule of government under which the whole "subject has been intrusted to the legislative department; and they are "to be understood and construed in the light of that practice wherever "the people have not expressly undertaken to change it."

To the same effect is the language of Judge CURTIS in the case of *Murray's Lessee*, before cited. He says (18 How. [U. S.], 282): "It "may be added, that probably there are few governments which do or "can permit their claims for public taxes, either on the citizen or the "officer employed for their collection or disbursement, to become sub- "jects of judicial controversy, according to the course of the law of the "land. *Imperative necessity* has forced a distinction between such "claims and all others, which has sometimes been carried out by sum- "mary methods of proceeding, and sometimes by systems of fines and "penalties, but always in some way observed and yielded to."

In Spencer *against* Merchant, 125th U. S. Rep., 355, it is said: "If "the legislature provides for notice to and hearing of each proprietor, "at some stage of the proceedings, upon the question of what propor- "tion of the tax shall be assessed upon his land, there is no taking of "his property without due process of law."

McMillen *v.* Anderson, 95 U. S., 37.
Davidson *v.* New Orleans, 96 U. S., 97.
Hagar *v.* Reclamation District, 111 U. S., 701.

FIFTH POINT.

The order of the Court of Common Pleas should be affirmed.

DAVID J. DEAN,
Of Counsel for Defendant in Error.

New York City,
January, 1890.

APPENDIX.

Digest of certain early Statutes concerned in the Levying of Taxes and Collection of the Same.

In the collection of English statutes in 10 folio volumes, published by direction of Parliament in 1810, and known as Statutes of the Realm, will be found *in extenso* all the Acts of Parliament concerned with revenue down to the accession of George I.

The first of these which is sufficiently detailed to be consulted with interest is "An Act for a subsidie to be granted to the King," passed 12 Hen. VII., 13.* In its essential features it is the same as 6 Hen. VIII., 26, which is selected (*infra.*) as being from its greater elaborateness more desirable to quote from. In the act first cited it is provided that if any person assessed does not pay "according to the seid cessing," and if the collectors cannot find any sufficient distress for the payment, proclamation is to be made thereof in the next market town. Upon the collector's certifying into the King's exchequer that no such sufficient distress can be found, it is provided that "the same person shall pay unto the King the doble somme of the "same money so upon him assessed." He is thus made a "King's debtor;" and by the common law the body, lands and goods of the King's debtor could be levied on to obtain payment.†

In 1514 was passed 6 Hen. VIII., 26.‡ By this act there was granted a subsidy to the King of 6d. in the pound yearly on land, and 6d. in the pound on personal property owned by the subject, and each person is to be rated on a valuation of the property owned by him at the time of the assessing.§ And is to be assessed at his place of residence for *all* his personal property in the realm, wherever situated. For the purpose of assessing and ordering said subsidy the House of Commons appoint commissioners for the several shires and places named. Upon their appointment they are to distribute between themselves the different local subdivisions of the kingdom, but no commissioner can sit outside of his own county. The tax commissioners of each particular subdivision are thereupon to call to their aid six, four or two of "the most substantial, discreet and honest persons, inhabi-"tants" of the place where they sit. These persons are to be sworn by the commissioners to truly inquire of the best and most value and substance of every person dwelling in the place and to certify before the commissioners their names and surnames, the substance and values of their property, etc.‖ This oath having been administered, the tax

* Statutes of the Realm, ii.,644.
† Murray's Lessee *v.* Hoboken Land Co., 18 How., 277.
‡ Statutes of the Realm, iii., 156.
§ Cf., Clark *v.* Norton, 49 N. Y., 248.
‖ Cf., Rev. Stat. of N. Y., 7th Edn., II., 990.

commissioners are to adjourn their sitting to a future day to be fixed and announced. In the mean time the assessors are to make inquiry and prepare their certificate (roll) which they hand into the commissioners. The roll or certificate of the certifyers (assessors) is to be overlooked by the Tax Commissioners, who may, if they see cause, examine the certifyers and other persons.* If they think any persons are assessed too low they may issue a precept to the constable to fetch them in and may then examine.† Any person, rated or certified that thinks he is rated too high, may appeal to the commissioners; can come before them on any of the days by them appointed; and on presenting himself shall take the following oath: ‡

"I shall faithfully, truly and plynly, according to my knowliche, "shewe unto you the King's Commissioners, and to other by you as-"sygned the best and grettest value or above of all my yerely profytts "in lands, tenements, rents, or such like possessions, wages, yerely "profytt fro wages, and the best and grettest value of all my goods, "cattalles, and summes of money to me owen, according to grant of "this act of subsidie, and truely answer to that I shall be examined "of, touching the premises without covin or dyscete, so God me help "and all seynts." §

All persons so offering themselves to be sworn and examined at the calling of the commissioners are "to be rated and charged ac-"cording to the value and substance showed by his or their oaths "made and none otherwise." ‖ Except as above, every person shall be rated and set according to the certificate upon him made.

All persons set, rated and taxed as aforesaid shall be bound and charged by the same, "and the somme or sommes upon him sette to be "dewe toward the payment of the said [subsidie]," and to be levied as in the act shall be thereafter specified.

By § 9 of the act it is next provided that, after the said taxes are by certificate as aforesaid made and laid, the Tax Commissioners, under the seals of to of them, are to make "an estrete [extract or true "copy] of the tax to the constables, bailiffs, and sufficient and substan-"tial inhabitants." By virtue of this writing or estrete, the person named therein shall have full authority to demand and levy of every person taxed, with power of distress of goods. ¶

By § 10 it is provided that the Tax Commissioners shall appoint "Collectors." To them in each locality they shall under seal deliver an estrete comprising in it the names of all such persons as were assigned to levy the said particulars (as in § 9), and the sums charged against every hundred, wapentake, town, &c. The collectors are to appoint days within their circuit for payment, and make proclamations thereof. ** The collectors are to collect the tax from the "constables,

* Cf., Laws of N. Y., Chap. 302 of 1859, §§ 7, 10.

† Cf., Laws of N. Y., Chap. 302 of 1859, § 11; no *increase* without notice.

‡ Cf., Laws of N. Y., Chap. 302 of 1859, § 10.

§ No other *hearing* than this is provided for the person taxed.

‖ The taxpayer's oath is conclusive. The same rule prevailed in New York till 1851. 1 Rev. Stat., 1st Ed'n, 392; § 15. Chap. 176 of 1851.

¶ Cf., II. Rev. Sta., N. Y., 7th Ed'n, 996, Chap. 573 of 1871.

** Cf., Laws of 1850, Chap. 121, § 27; Laws of 1843, Art. II., § 5; Laws of 1871, Chap. 381, § 2.

" bailiffs, and substantial persons " referred to in § 9, and have power of distress, etc.

By the terms of § 15 of the act, it is provided that: " if any per- " son or persons for them silf or for their servant, &c., &c., * * * " or as gardeyn, &c., * * * * shall be rated, valued, " taxed er sett to any some or sommes by reason of this act; and after " the taxation and sessing upon any such person or persons, or " upon or for the goods and catalles of any suche person made, and " before the same somes so taxed, be levied and paid unto such person " or persons as shall be charged with the receipt of the same, happen to " die or to depart fro the place wher he was so taxed * * * " or his goods and chattels so eloygned or in such privy and covert " manner kept that the person or persons charged with the [col- " lection of the] same by estretts or other writings fro 2 of " the said commissioners can not ne may not leveye the same " somme or sommes comprised in their charges by distresse within the " lymetts of their collection * * * then upon relacyon thereof " made with due examynacyon by the othe of such person or " persons as shall be charged with and for the receipt of the same " before 2 of the commissioners where such person or persons or other " as is above seid or their goodes or cattalles were set or taxed [a pre- " cept of distress shall issue which will run anywhere throughout the " realm and take goods, lands, &c., wherever found]. And if any such " person that shuld be so distreyned have no lands ne tenements suffi- " cient * * * or hath eloigned, aliened or hid his goods or chat- " tels whereby he shuld or might be distreyned in such manner that " such goods and cattalles shall not be knowen or found, so that the " some of or by hym to be paied in the seid fourme shall ne can not be " conviently levied, then upon relacion thereof unto 2 of the commis- " sioners where such person or persons was taxed and sett by the othes " of hym or them that shal be so charged with the leveye and payt. of " that somme or sommes the said commissioner shall make a precept in " in such manner as is before rehereed [*i.e.*, unto the persons charged " with the collection or to any Shyryff Stuard Baylie or other what- " somever officer mynster, &c.] for to take and arrest the body of such " person or persons that ought to pay the said sommes, * * * and " them so taken savely to kepe in the prison within the shire or other " place where any such person or persons shall be taken or attached, " theire to remain without bayle or maynprise unto he have paid the " somme or sommes that such person or persons for hymsilf or for any " other by this seid act ought to charged with, and also for the fees " of every such arest to hym or them that shall execute such precept " xxd." [Every officer to whom precept comes to execute or forfeits xxs.]

[Gaoler must keep till he pays debt & fee. If not gaoler forfeits xls. and must pay double principal debt & the xxd.]

With but slight modifications, this form of statute has prevailed in England through changes of dynasty and civil convulsions, as prescribing the manner in which the taxing power of the kingdom was to be exerted.

In the 15 Hen. VIII., 16 (1523),* a further provision, thereafter retained, is added to the effect, that if the moneys in default be collected by the precept of arrest, or the person be committed to prison, then "the said two commisssioners which shall award such process, shall "make certificate in the Exchequer of that that shall be done in the "premises in the term next following the committment to prison."

The acts 26 Hen. VIII., C. 19, and 32 Hen. VIII., C. 50, are similar in form.† In 34 and 35 Hen. VIII., C. 27, two important modifications are introduced. The oath of the person taxed is to be no longer conclusive, but the commissioners are to make careful examinations of himself and of others, and may alter the assessment after such examination as shall to them appear just. Such alteration, however, must be made before the estreat is filed in the exchequer.

In the case, provided for in the 15th section of the act above quoted, instead of the commissioners issuing their precept, process is to be made for the King "out of the same Exchequier by the discrea-"tion of the Barrounes of the same Eschequier against such person, "his heirs and executors so behind with his payment."‡

The form, as thus amended, remained unchanged throughout the succeeding reigns, *vide* 7 Ed. VI., C. 12; 4 and 5 Phil. and Mar. C. 11; 1 Eliz., 21; 27 Eliz., 17; 43 Eliz., 17; 3 Jac. I. 1; 21 Jac. I., and 1 Car. I., 6.§

In the Act passed in 1656 (chap. 12 of that year), "by his Highness "the Lord Protector and the present Parliament," the language of the 15th section of the old Act of Henry VIII. is considerably simplified.‖

"And if any person or persons shall neglect or refuse to pay his or "her assessment, or shall conceal, or convey away his or her goods, or "other personal estate whereby the sum of money so assessed cannot "be levied according to this act, then the respective commissioners, or "any two or more of them, are hereby authorized to imprison the per-"son and sequester the estates of every such person, for the advance-"ment of the said service, wheresoever the same may be discovered and "found."

In the 31 Car., II., 6,¶ there is a further change of phraseology. The sub-collectors are to deliver to the head collector a schedule of defaulters (certified to by two tax commissioners), where no sufficient distress is to be found, and not otherwise. This goes to the Receiver-General, and is filed in the Court of Exchequer,—"whereupon every person so mak-"ing default of payment may be charged by processe of the court accord-"ing to the course of the Court of Exchequer in such cases," § 42.

In 1698, 11 Wm. and Mary, 2,** the power to commit was restored to the commissioners, the section being changed so as to read: "if any "person or persons shall neglect or refuse to pay his or their assessment "by the space of four days after demand * * * in every such case

* Statutes of the Realm, iii., 230.

† Idem., iii., 516, 812.

‡ This process, it will be noted, ran against body, goods and lands. See a discussion of this subject in *Murray's Lessee* v. *Hoboken* Land Co., 18 How., 277, 278.

§ Statutes of the Realm, iv., 176, 334, 385, 744, 991, 1108, 1247, V. 9.

‖ Scobell Acts of Cromwell [London, 1658], p. 400.

¶ Statutes of the Realm, V. 700.

** Idem, VII., p. 567.

"any two or more of the commissioners * * * are hereby author-
"ized by warrants under their hands and seals to commit such person or
"persons (except a Peer or Peeress of the realm) to the common gaol,
"there to be kept without bail or mainprise until payment be made
"and no longer."

This form continued down to the passage of the last tax act before the American Revolution, 1 and 2 Geo. III., C. 2 (A. D. 1760), except that ten days instead of four are allowed for payment after final demand; and the Taxes Management Act of 1880, 43 and 44 Vict., C. 19, contains the same provisions.

Nor, when we turn to the provisions of the colonial laws bearing upon this subject, do we find any provision for the trial by jury, or the formal judicial investigation with production and cross-examination of the witnesses for which the plaintiff in error contends.

The manner of raising public money was established by Col. Nicolls on June 1, 1665, and was thus: The high sheriff issued a warrant annually, to the high constables of every district, and they sent theirs to the petty constables, who, with the overseers of each town, made a list of all male persons above 16 years of age, with an estimate of their rent and personal estates, and then taxed them according to certain rates prescribed by a law. After the assessment was returned to the high sheriff and approved by the governor, the constables received warrants for levying the taxes by distress and sale.

Smith's History of New York, i., p. 34; (octvo., p. 61).

The earliest colonial act, the text of which is now to be found in any authorized publication, was passed May 13, 1691, and is entitled "An "Act for the depaying of the publick and necessary charge through-"out this province, and maintaining the poor, and preventing vaga-"bonds."—*Bradford's Laws*, p. 6; *Van Schaick's Law*, p. 4. By this it was enacted:

"That there be elected and chosen annually once a year, in each "respective town within this province two freeholders, who are hereby "empowered to assess and establish a certain rate upon each of the free-"holders and inhabitants within their respective towns; which assess-"ment or certain rate shall, upon a certain day, as the inhabitants of "the respective towns shall appoint, be delivered to a certain free-"holder, which shall be likewise chosen in each respective town afore-"said to supervise and examine the publick and necessary charge of "each respective county.

* * * * * *

"And be it further provided by the authority aforesaid, that any "such assessment or rate made, ordained or appointed by the person so "chosen shall be collected and gathered by the constable, or any other "person chosen or appointed thereunto; as also, if any person or per-"sons shall refuse to pay the said assessment or rate, that it may be "lawful for them that are chosen as aforesaid, and they are hereby "authorized to issue out their warrant to the constable, under their "Hands and Seals, or any other person appointed by them, to collect "and levy the same by distress on their goods and chattles."

It is to be noted that on the very day of the passage of this act, the same Assembly passed the celebrated Bill of Rights, which was subse-

quently (1697) repealed by the king, and in which it was provided that no freeman should be taken and imprisoned, or be dissiezed of his freehold, etc., etc., nor be passed upon, adjudged or condemned, but by the lawful judgment of his peers, and by the law of this province; and that no man should be put out of his lands, tenements, etc., nor * * * in any way destroyed or molested, without first being brought to answer by due course of law." *

The various revenue laws passed from time to time by the Colonial Assembly being obsolete when the several compilations of Bradford, Van Schaick and Livingston and Smith were published, are not printed in full therein. Other acts therein contained, however, sufficiently indicate that the manner of laying and collecting taxes was as indicated in our brief.†

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* Bradford, p. 4.

† Act of Oct. 18, 1701, L. & S., 43; Act of June 19, 1701, L. & S., 54; Act of July 24, 1724, V. S., 135; Act of Dec. 17, 1743, V. S., 232; Act of May 19, 1744, V. S., 238; Act of Nov. 8, 1767, V. S., 388; Act of May 20, 1769, V. S., 539